PHILIPPINE REPORTS

VOL. 890

NOVEMBER 11 - 25, 2020

PHILIPPINE REPORTS
VOLUME 890

CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

NOVEMBER 11 - 25, 2020

SUPREME COURT OF THE PHILIPPINES
(as of June 2023)

HON. ALEXANDER G. GESMUNDO, Chief Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Senior Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice
HON. MARIO V. LOPEZ, Associate Justice
HON. SAMUEL H. GAERLAN, Associate Justice
HON. RICARDO R. ROSARIO, Associate Justice
HON. JHOSEP Y. LOPEZ, Associate Justice
HON. JAPAR B. DIMAAMPAO, Associate Justice
HON. JOSE MIDAS P. MARQUEZ, Associate Justice
HON. ANTONIO T. KHO, JR., Associate Justice
HON. MARIA FILOMENA D. SINGH, Associate Justice

ATTY. MARIFE LOMIBAO-CUEVAS, Clerk of Court En Banc

SUPREME COURT OF THE PHILIPPINES
(as of November 2020)

HON. DIOSDADO M. PERALTA, Chief Justice
HON. ESTELA M. PERLAS-BERNABE, Senior Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. ALEXANDER G. GESMUNDO, Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. ROSMARI D. CARANDANG, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice
HON. MARIO V. LOPEZ, Associate Justice
HON. EDGARDO L. DE LOS SANTOS, Associate Justice
HON. SAMUEL H. GAERLAN, Associate Justice
HON. RICARDO R. ROSARIO, Associate Justice

ATTY. EDGAR O. ARICHETA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Diosdado M. Peralta

Members

Hon. Alfredo Benjamin S. Caguioa
Hon. Rosmari D. Carandang
Hon. Rodil V. Zalameda
Hon. Samuel H. Gaerlan

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Estela M. Perlas-Bernabe

Members

Hon. Alexander G. Gesmundo
Hon. Amy C. Lazaro-Javier
Hon. Mario V. Lopez
Hon. Ricardo R. Rosario

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Marvic Mario Victor F. Leonen

Members

Hon. Ramon Paul L. Hernando
Hon. Henri Jean Paul B. Inting
Hon. Edgardo L. Delos Santos
Hon. Ricardo R. Rosario

Division Clerk of Court

Atty. Misael Domingo C. Battung III

PHILIPPINE REPORTS

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

The Office of the Reporter
Supreme Court
Manila
2023

ANNALIZA S. TY-CAPACITE
DEPUTY CLERK OF COURT AND REPORTER

FLOYD JONATHAN L.TELAN
SC ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

JOSE ANTONIO C. BELLO
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN O. GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY V

FREDERICK I. ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA G. CASTILLO
COURT ATTORNEY IV & CHIEF, EDITORIAL DIVISION

LORELEI S. BAUTISTA
COURT ATTORNEY IV

ROUSE STEPHEN G. CEBREROS
COURT ATTORNEY IV

SARAH FAYE Q. BABOR
COURT ATTORNEY IV

GERARD P. SARINO
COURT ATTORNEY II

MA. DELILAH B. DE UNGRIA
CHIEF, PUBLICATION DIVISION

PHILIPPINE REPORTS
CONTENTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 10571. November 11, 2020]

ATTY. VIRGILIO A. SEVANDAL, *Complainant, v.* **ATTY. MELITA B. ADAME,** *Respondent*.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS WHO ARE NOT ENGAGED BY CLIENTS TO APPEAR BEFORE A TRIBUNAL HAVE NO AUTHORITY TO ENTER THEIR APPEARANCE AS COUNSELS AND HAVE NO RIGHT TO RECEIVE ATTORNEY'S FEES.— Atty. Sevandal's acts were in direct violation of Rule 8.02, Canon 8 of the CPR . . . .

. . .

It is undisputed that Atty. Sevandal was not the counsel of record in NLRC Case No. NCR OFW (M) 05-06890-11. It was Atty. Adame who filed the complaint with the NLRC and the only counsel on record of Merlina.

Atty. Sevandal's insistence that he executed a Retainer Contract and an Addendum to Retainer Contract with Merlina as basis for appearing on her behalf before the NLRC is untenable. *First*, . . . [t]he scope [of the Retainer Contract] explicitly stated that the contract covers the litigation at the level of the RTC only. *Next*, the Addendum to Retainer Contract was dubious according to the findings of the IBP since (1) the said Addendum did not amend or expand the scope of Atty. Sevandal's engagement as provided in the Retainer Contract,

i.e., still limited to the RTC level only, and (2) it appeared that there were two different versions as annexed in the Complaint and respondent's Position Paper.

Also, despite having no authority to represent Merlina in the proceedings before the NLRC, Atty. Sevandal did the following:

> 1) Filed a formal entry of appearance as counsel on 9 May 2011 in the NLRC case filed by Atty. Adame despite his opposition to the said case since on the same date he filed a Manifestation Re: Withdrawal of Complaint;
>
> 2) At the succeeding NLRC mandatory conferences, he entered his appearances as counsel for Merlina and manifested his objections to the appearance of Atty. Adame; and
>
> 3) Filed an *Ex Parte* Motion for Attorney's Lien on 17 June 2011 asking for the payment of his attorney's fee equivalent to 20% of the amount that will be awarded to Merlina and later on received the amount of ₱300,000.00 as attorney's fees in order "to stop him from meddling in the ongoing settlement before the NLRC."

All of these occurred after Merlina hired the services of Atty. Adame as her lawful attorney-in-fact and caused the latter to file the NLRC Complaint on May 3, 2011 and the annulment of the Retainer Contract by Merlina through a Revocation of Retainer Contract dated May 24, 2011.

. . .

Not having been engaged by the client to appear before the NLRC, Atty. Sevandal had no authority to enter his appearance as counsel and encroach on the services of another lawyer. He also had no right to receive the amount of ₱300,000.00 as attorney's fees awarded by the NLRC.

. . .

. . . Also, aside from violating Rule 8.02, Atty. Sevandal demanded and received a substantial amount of money not due to him. Thus, Atty. Sevandal should return the amount of ₱300,000.00 to Merlina.

APPEARANCES OF COUNSEL

Vicente Millora for Respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

The Facts

On September 6, 2011, complainant Atty. Virgilio A. Sevandal (Atty. Sevandal) filed with the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) a Complaint[1] dated September 5, 2011 for disbarment against respondent Atty. Melita B. Adame (Atty. Adame) in violation of Rule 8.02,[2] Canon 8 (encroaching upon the professional employment of another lawyer) and Rule 10.01,[3] Canon 10 (doing any falsehood) of the Code of Professional Responsibility (CPR).

Atty. Sevandal claimed that through a verbal agreement on February 2, 2011, Merlina Borja-Sevandal (Merlina) engaged his professional services to provide legal advice and assistance, as well as file court cases when necessary, to Merlina's claims with Fuyoh Shipping Co. (Fuyoh Shipping), Bandila Maritime Services, Inc. (Bandila Maritime), Social Security System (SSS), and other offices for whatever benefits she was entitled to as the surviving spouse of Master Camilo Verano Sevandal (Camilo). Camilo died on January 27, 2011 and was employed as a Ship Master by Fuyoh Shipping/Bandila Maritime at the time of his death. The aforementioned verbal agreement was substantiated by an Affidavit[4] dated December 7, 2011 executed by Josefina Verano Sevandal, Merlina's first cousin, attesting

---

[1] Docketed as CBD Case No. 11-3154; *rollo*, pp. 2-7.

[2] Rule 8.02 — A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer, however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

[3] Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[4] *Rollo*, pp. 78-79.

that she was in the meeting with Atty. Sevandal and Merlina on February 2, 2011 and witnessed the agreement of the parties on Atty. Sevandal's 10% contingent fee for handling Merlina's case.

On March 9, 2011, Atty. Sevandal and Merlina executed a Retainer Contract[5] with respect to the recovery of Merlina's share on the (1) conjugal partnership property, which she acquired during her marriage, and (2) legitime as heir and surviving spouse of Camilo. As compensation, Merlina promised to pay: (1) acceptance and success fees amounting to 10% of the prevailing market value of all real and/or personal property restored/vested in the possession of the client; (2) appearance fees; (3) hotel, travel and food expenses; and (4) cash advances of (a) ₱100,000.00 upon receipt by the client of the insurance proceeds from the employer/office concerned, and (b) ₱150,000.00 upon the filing of the complaint in the proper court. Further, it was expressly stated in the Retainer Contract that the contract covers the litigation at the level of the Regional Trial Court (RTC) only and that if there would be any appeal or petition before the appellate courts, a new retainer contract would be executed by the parties.

On April 25, 2011, Atty. Sevandal alleged that he executed an Addendum to Retainer Contract with Merlina stating that the client agreed to contract his services as legal counsel with respect to her claims for death and other monetary benefits as the legal wife of Camilo from the following offices/agencies: (1) Bandila Maritime; (2) Del Rosario Pandiphil, Inc. (DRPI); (3) Associated Maritime Officers' and Seamen's Union of the Philippines; (4) Overseas Workers Welfare Administration; (5) Employees' Compensation Commission; (6) SSS; and (7) other offices and/or agencies. Also, the client promised to pay an acceptance and success fee amounting to 20% of the total death/monetary benefits that the client may receive. Atty. Sevandal submitted an Affidavit dated December 2, 2011 executed by Analyn B. Dingal, secretary of Atty. Cris Paculanang who

[5] Id. at 23-24.

notarized the Addendum, stating that she handed the Addendum to client Merlina, in the presence of Atty. Sevandal.[6]

On April 26, 2011, Atty. Sevandal filed a claim for death and other benefits that Merlina may be lawfully entitled to with DRPI, the indemnity agent of Fuyoh Shipping and Bandila Maritime.[7]

Meanwhile, on May 3, 2011, Atty. Adame, in behalf of Merlina, filed a Complaint with the National Labor Relations Commission (NLRC)[8] against Fuyoh Shipping and Bandila Maritime for the payment of death benefits, sickness allowance, damages, and attorney's fees.[9]

On May 4, 2011, DRPI informed Atty. Sevandal that Merlina's claim for death benefits was discontinued due to the filing of the complaint by Atty. Adame with the NLRC. However, it was intimated that if the NLRC complaint would be withdrawn, the settlement of Merlina's claim would be resumed by DRPI and that in less than two (2) months, Merlina would receive a check covering the death benefits. Atty. Sevandal alleged that Merlina was amenable to the withdrawal of the NLRC complaint.[10]

On May 9, 2011, Atty. Sevandal filed with the NLRC a Manifestation Re: Withdrawal of Complaint (filed by Atty. Adame), as well as a Formal Entry of Appearance as counsel for Merlina. Atty. Sevandal attached a photocopy of the Addendum to Retainer Contract.[11]

On May 10, 2011, Atty. Sevandal was informed by DRPI that the settlement claim for death benefits would not be resumed

---

[6] Id. at 3, 45.

[7] Id. at 3.

[8] Docketed as NLRC Case No. NCR OFW (M) 05-06890-11.

[9] Rollo, pp. 3, 61-64.

[10] Id. at 3-4.

[11] Id. at 4.

since DRPI decided to enter its appearance at the mandatory conference called by the NLRC.[12]

On May 23, 2011, Atty. Sevandal entered his appearance as counsel for Merlina at the NLRC mandatory conference and a certain Atty. Ma. Bella Eviota (Atty. Eviota) entered her appearance, for and in the absence of Atty. Adame, as counsel for Merlina. Atty. Sevandal manifested his objection pursuant to Rule 8.02, Canon 8 of the CPR.[13]

On May 30, 2011, at the next mandatory conference, Atty. Adame filed her entry of appearance as counsel for Merlina. Atty. Sevandal again reiterated his objection.[14]

On June 17, 2011, Atty. Sevandal filed an *Ex-Parte* Motion for Attorney's Lien, equivalent to 20% of whatever amount would be awarded to Merlina, as agreed upon under the Addendum to Retainer Contract.[15]

On July 7, 2011, Atty. Adame filed an Opposition/ Manifestation[16] (to the *Ex-Parte* Motion for Attorney's Lien) stating that she caused the filing of the NLRC complaint. Atty. Adame alleged that Atty. Sevandal has no basis for claiming attorney's fees since Merlina "vehemently denies having signed any addendum contract giving 20% fee to Atty. Sevandal."[17] Atty. Adame added that the Retainer Contract dated March 9, 2011 was annulled/made void by Merlina through a Revocation of Retainer Contract dated May 24, 2011.

In an Order dated August 1, 2011, the Labor Arbiter approved the Compromise Agreement entered into by Merlina and Bandila Maritime and the amount of ₱300,000.00 attorney's fees was

---

[12] Id.

[13] Id.

[14] Id. at 4-5.

[15] Id. at 5.

[16] Id. at 16-18.

[17] Id. at 17.

awarded to Atty. Sevandal. Atty. Sevandal was made to sign a general release and quitclaim, captioned as Sum of Money and Release of Attorney's Lien, to absolve and release Bandila Maritime from any and all claims.[18]

On September 6, 2011, Atty. Sevandal filed the disbarment complaint against Atty. Adame with the IBP-CBD.

In her Answer[19] dated October 4, 2011, Atty. Adame denied the allegations that she violated the CPR. Atty. Adame expressed that while she was not privy to the Retainer Contract executed by Atty. Sevandal and Merlina, the same had no relation to the case she filed with the NLRC since the Retainer Contract was made exclusively for the filing of civil cases at the RTC level only. Atty. Adame stated that Merlina executed a Revocation of Retainer Contract[20] dated May 24, 2011 revoking, annulling and voiding the Retainer Contract because of misrepresentations, threats, abuse of confidence and conflict of interests with Atty. Sevandal. Also, Atty. Adame posited that Merlina denied signing any Addendum to Retainer Contract and that Atty. Sevandal did not even submit an original copy of the alleged Addendum to the NLRC and the IBP, but only mere photocopies which were questionable in its content and accompanying signatures. Atty. Adame argued that since the Retainer Contract had been revoked by Merlina, then it should follow that the alleged Addendum had also been revoked.[21]

Likewise, Atty. Adame declared that Atty. Sevandal's misleading assertions of alleged pending payment before DRPI in settlement of Merlina's claims was denied by DRPI's counsel during the NLRC mandatory conference on May 30, 2011 while in open session and in the presence of the Labor Arbiter and all parties, including Atty. Sevandal himself.[22]

---

[18] Id. at 58-59.

[19] Id. at 28-40.

[20] Id. at 25-26.

[21] Id. at 28-31.

[22] Id. at 32.

Atty. Adame objected to Atty. Sevandal's allegation that Merlina agreed to the withdrawal of the NLRC complaint. Atty. Adame clarified that (1) Merlina filed a Manifestation on May 25, 2011 to the NLRC that she appointed Atty. Adame as her lawful attorney-in-fact on May 3, 2011 and Atty. Adame had the sole authority and discretion relevant to the case she filed before the NLRC, and (2) Merlina declared in the NLRC open session on May 30, 2011 that she chose Atty. Adame as her legal counsel.[23]

Further, Atty. Adame asserted that Atty. Sevandal was the one vehemently against the filing of the case at the NLRC and his entry of appearances at the NLRC mandatory conferences as counsel for Merlina, as well as his objections to Atty. Adame's representation, was self-serving. Atty. Adame added that in all the pleadings from the parties in the NLRC case, Atty. Sevandal was not included as a counsel on record, but was merely allowed to be present in the proceedings as a mere bystander.[24]

Atty. Adame expressed that she did not object to Merlina's generous offer to give the amount of ₱300,000.00 to Atty. Sevandal, being the uncle of her deceased husband, in order to expedite the NLRC case. The said amount was given to Atty. Sevandal during the last hearing and where Atty. Sevandal was made to sign a document entitled "Sum of Money and Release of Attorney's Lien." However, despite receiving said amount and signing the quitclaim, Atty. Sevandal harbored ill feelings against her, when she only did her duty and successfully finished the case in a span of two months.[25]

Lastly, Atty. Adame stated that there was no encroachment of professional employment of another lawyer to speak of since the Retainer Contract refers to properties already acquired and which had to be recovered or restored to Merlina as the first wife of Camilo, but had nothing to do with the money claim

---

[23] Id. at 32-33.

[24] Id. at 33.

[25] Id. at 33-34.

for death benefits of her late husband's employment as a seafarer. Also, the scope of the Retainer Contract covered litigation of a case at the RTC level only.[26]

The IBP's Report and Recommendation

On February 2, 2013, the Investigating Commissioner of the IBP-CBD issued a Report and Recommendation[27] finding that Atty. Adame did not encroach on the professional employment of Atty. Sevandal nor commit any falsehood. The dispositive portion of the Report and Recommendation states:

> In view of the foregoing premises, it is respectfully recommended that the instant complaint be dismissed for lack of merit.
>
> MOREOVER, it is respectfully recommended that an order be made directing complainant to explain why he should not be held administratively liable for encroaching upon the professional services of respondent with client and for receiving Php300,000 as attorney's fees in the NLRC case considering that complainant has neither authority to appear nor has he rendered any service for the client on the said NLRC case.
>
> RESPECTFULLY SUBMITTED.[28]

The Investigating Commissioner held that Atty. Adame did not violate Rule 8.02, Canon 8 of the CPR. The Investigating Commissioner stated that the Retainer Contract dated 9 March 2011 relied upon by Atty. Sevandal as his basis that Atty. Adame allegedly encroached on his professional services covered the litigation at the level of the RTC only. Thus, the NLRC case was not covered by Atty. Sevandal's engagement with his client, Merlina. Also, Merlina even declared in writing and in open court that Atty. Adame was her counsel of choice, which repudiated Atty. Sevandal's claim.[29]

---

[26] Id. at 36-37.

[27] Id. at 151-161.

[28] Id. at 161.

[29] Id. at 158-159.

Also, the Investigating Commissioner declared that on the contrary, it was Atty. Sevandal who encroached upon and meddled with the legal services and professional engagement provided by Atty. Adame to Merlina in the NLRC case by attending the NLRC hearings even without Merlina's authority. Further, Atty. Sevandal was awarded the amount of ₱300,000.00[30] as attorney's fees, without having done or filed anything to advance the interests of Merlina with the NLRC.[31]

The Investigating Commissioner observed that Atty. Sevandal's own evidence, the Addendum to Retainer Contract, was doubtful for several reasons: (1) the Addendum did not amend or expand the scope of Atty. Sevandal's engagement as provided in the Retainer Contract, which was still limited to the RTC level only, and (2) there were two different versions of the Addendum — (a) Annex "B" of the Complaint, and (b) Annex "13" of Respondent's Position Paper and the last paragraph of the first version does not appear on the last paragraph of the second version.[32]

Lastly, the Investigating Commissioner held that Atty. Adame is not guilty of violating Rule 10.01, Canon 10 of the CPR. In the Complaint, Atty. Sevandal alleged that Atty. Adame falsely averred in her Opposition/Manifestation dated July 7, 2011 filed with the NLRC that (1) Merlina denied signing any Addendum giving 20% fee to Atty. Sevandal despite Atty. Sevandal's submission of a copy of the Addendum on May 9, 2011 to the NLRC, and (2) Merlina's statement in the Revocation to the Retainer Contract that she did not give any written authority to Atty. Sevandal to claim for death benefits and instead engaged the services of Atty. Adame and Atty. Eviota. The Investigating Commissioner stated that by Atty. Sevandal's own declaration, the alleged false statements were made by Merlina and not by Atty. Adame. Thus, Atty. Adame cannot be held liable for allegedly false statements merely relayed to her by Merlina.[33]

---

[30] Also stated as "₱30,000.00" in IBP Resolution No. XXI-2014-128; id. at 183.

[31] Id. at 159.

[32] Id. at 159-160.

[33] Id. at 160-161.

Thereafter, in the Notice of Resolution No. XX-2013-362[34] dated March 21, 2013, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner, finding the same to be fully supported by the evidence on record and the applicable laws and rules, and dismissed the case for lack of merit.

Atty. Sevandal filed a Motion for Reconsideration which was denied in Notice of Resolution No. XXI-2014-128[35] dated March 22, 2014. In the same Resolution, the IBP directed Atty. Sevandal to show cause why he should not be held administratively liable for encroaching into the professional services of Atty. Adame and receiving ₱300,000.00 as attorney's fees having rendered no service and without any authority to appear in the NLRC case.

Atty. Sevandal filed a Compliance with Show Cause Resolution[36] dated December 14, 2015. Thereafter, the IBP-CBD issued a Report and Recommendation[37] finding Atty. Sevandal guilty of encroaching into the professional services of Atty. Adame and recommended that Atty. Sevandal be suspended from the practice of law for two (2) years and to return the amount of ₱300,000.00 to the client.

In a Resolution[38] dated November 28, 2017, the IBP Board of Governors adopted the findings of fact and recommendation of the IBP-CBD.

Pursuant to Rule 139-B of the Rules of Court, the IBP transmitted the documents of this case to the Court.

The issue is whether or not the IBP is correct in suspending Atty. Sevandal from the practice of law for two (2) years and

---

[34] Id. at 150.

[35] Id. at 25-26.

[36] Id. at 212-213.

[37] Id. at 225-228.

[38] Id. at 223.

in directing him to return the amount of ₱300,000.00 to the client.

The Court's Ruling

We modify the recommendation of the IBP.

Atty. Sevandal's acts were in direct violation of Rule 8.02, Canon 8 of the CPR, which states:

> Rule 8.02 — A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer, however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

It is undisputed that Atty. Sevandal was not the counsel of record in NLRC Case No. NCR OFW (M) 05-06890-11. It was Atty. Adame who filed the complaint with the NLRC and the only counsel on record of Merlina.

Atty. Sevandal's insistence that he executed a Retainer Contract and an Addendum to Retainer Contract with Merlina as basis for appearing on her behalf before the NLRC is untenable. *First*, the Retainer Contract covered services for the recovery of the client's share in the conjugal partnership property acquired during the marriage, as well as her legitime as heir and surviving spouse of her deceased husband. The scope explicitly stated that the contract covers the litigation at the level of the RTC only. *Next*, the Addendum to Retainer Contract was dubious according to the findings of the IBP since (1) the said Addendum did not amend or expand the scope of Atty. Sevandal's engagement as provided in the Retainer Contract, *i.e.*, still limited to the RTC level only, and (2) it appeared that there were two different versions as annexed in the Complaint and respondent's Position Paper.

Also, despite having no authority to represent Merlina in the proceedings before the NLRC, Atty. Sevandal did the following:

1) Filed a formal entry of appearance as counsel on 9 May 2011 in the NLRC case filed by Atty. Adame despite his opposition

to the said case since on the same date he filed a Manifestation Re: Withdrawal of Complaint;

2) At the succeeding NLRC mandatory conferences, he entered his appearances as counsel for Merlina and manifested his objections to the appearance of Atty. Adame; and

3) Filed an *Ex-Parte* Motion for Attorney's Lien on 17 June 2011 asking for the payment of his attorney's fee equivalent to 20% of the amount that will be awarded to Merlina and later on received the amount of ₱300,000.00 as attorney's fees in order "to stop him from meddling in the ongoing settlement before the NLRC."

All of these occurred after Merlina hired the services of Atty. Adame as her lawful attorney-in-fact and caused the latter to file the NLRC Complaint on May 3, 2011 and the annulment of the Retainer Contract by Merlina through a Revocation of Retainer Contract dated May 24, 2011.

In *Linsangan v. Atty. Tolentino*,[39] Rule 8.02, Canon 8 of the CPR mandates that a lawyer "should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services."

Not having been engaged by the client to appear before the NLRC, Atty. Sevandal had no authority to enter his appearance as counsel and encroach on the services of another lawyer. He also had no right to receive the amount of ₱300,000.00 as attorney's fees awarded by the NLRC.

In the cases of *Likong v. Lim*[40] and *Cahanap v. Palangan*,[41] the Court disciplined and imposed a penalty of one (1)-year suspension from the practice of law on a lawyer for violating Rule 8.02, Canon 8 of the CPR.

Just like in these cases, We modify in this case the recommendation of penalty by the IBP from a suspension of

---

[39] 614 Phil. 327 (2009).

[40] 305 Phil. 448 (1994).

[41] A.C. No. 11983, August 6, 2018.

two (2) years from the practice of law to one (1)-year suspension. Also, aside from violating Rule 8.02, Atty. Sevandal demanded and received a substantial amount of money not due to him. Thus, Atty. Sevandal should return the amount of ₱300,000.00 to Merlina.

WHEREFORE, the Court finds Atty. Virgilio A. Sevandal **GUILTY** of Encroaching the Professional Services of Atty. Melita B. Adame. He is hereby **SUSPENDED** from the practice of law for **ONE (1) YEAR**, effective upon receipt of this Decision and directed to **RETURN** the amount of ₱300,000.00 to Merlina B. Sevandal. He is likewise **WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be appended to complainant's personal record, the Integrated Bar of the Philippines, the Public Information Office and the Office of the Court Administrator for circulation to all courts for their information and guidance. Likewise, a Notice of Suspension shall be prominently posted in the Supreme Court website as a notice to the general public.

Atty. Virgilio A. Sevandal, upon receipt of this Decision, shall forthwith be suspended from the practice of law and shall formally manifest to this Court that his suspension has started. He shall furnish all courts and quasi-judicial bodies where he has entered his appearance a copy of this Decision.

SO ORDERED.

Leonen (*Chairperson*), *Hernando,* and *Rosario, JJ.,* concur.

Inting, J., on official leave.

THIRD DIVISION

[G.R. No. 191359. November 11, 2020]

LUCILA PURIFICACION,* *Petitioner, v.* **CHARLES T. GOBING and ATTY. JAIME VILLANUEVA,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT (R.A.) NO. 3844 (THE AGRICULTURAL LAND REFORM CODE); STATUTE OF LIMITATIONS; REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; AN ACTION TO ENFORCE ANY CAUSE OF ACTION UNDER R.A. NO. 3844 IS BARRED BY PRESCRIPTION IF NOT COMMENCED WITHIN THREE YEARS AFTER SUCH CAUSE OF ACTION ACCRUED; CAUSE OF ACTION, DEFINED.— Section 38 of RA No. 3844, otherwise known as the Agricultural Land Reform Code, provides:

> SECTION 38. *Statute of Limitations*. - An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

Section 2, Rule 2 of the Rules of Court defines a cause of action as the "act or omission by which a party violates a right of another". In the instant case, Lucila's cause of action arose when the Purificacion spouses executed the notarized Malayang Salaysay dated July 1, 1993. In the said document, the Purificacion spouses relinquished their tenancy rights in favor of the former landowners in exchange for ₱1,046,460.00, representing their disturbance compensation.

On January 3, 2000, or more than six years from the time they acknowledged having received the foregoing amount as their disturbance compensation, Lucila filed the instant complaint and claimed that the payment of the said disturbance compensation was incomplete since Atty. Villanueva allegedly

---

* Also spelled as Purification in some parts of the records.

promised them a 1,000 square meter portion of the subject lot as an additional disturbance compensation.

However, in view of the period prescribed under Section 38 of RA No. 3844, an action to enforce any cause of action under the Code shall be barred if not commenced within three years after such cause of action accrued.

Therefore, Lucila's present action is barred by prescription.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; EVIDENCE; FINDINGS OF FACT OF ADMINISTRATIVE BODIES; THE FINDINGS OF FACT OF ADMINISTRATIVE BODIES, IF BASED ON SUBSTANTIAL EVIDENCE AND AFFIRMED BY THE APPELLATE COURT, ARE CONTROLLING ON THE REVIEWING AUTHORITY.— Section 16 of DAR AO No. 1, series of 1990 provides that disturbance compensation shall be paid to tenant, farm workers or *bona fide* occupants affected by the land conversion . . . .

. . .

. . . [T]his Court finds that respondents have already properly compensated Lucila in the amount of ₱1,046,460.00 as disturbance compensation . . . [,] [as found by] the DARAB . . . .

. . .

We note that the DARAB and the appellate court had made identical and sound dispositions on the same issues posed by Lucila before them.

Well settled is the rule that findings of fact of administrative bodies, such as the DARAB in the instant case, if based on substantial evidence, and especially if affirmed by the appellate court, are controlling on the reviewing authority. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law, none of which obtains in this case.

3. ID.; EVIDENCE; ADMISSIBILITY OF EVIDENCE; WEIGHT AND SUFFICIENY OF EVIDENCE; NOTARIZED DOCUMENTS; PRESUMPTION OF

REGULARITY OF NOTARIZED DOCUMENTS; A NOTARIZED DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY, AND IT IS ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.— [T]he Notarized Malayang Salaysay is duly acknowledged before a notary public. Settled is the rule that a notarized document "has in its favor the presumption of regularity and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face."

Being a notarized document, the Notarized Malayang Salaysay has in its favor the presumption of regularity, as opposed to the Unnotarized Malayang Salaysay. Thus, to overcome the presumption of regularity, "there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld." In the instant case, Lucila's bare denials will not suffice to overcome the presumption of regularity of the assailed Notarized Malayang Salaysay.

APPEARANCES OF COUNSEL

Rexie Maristela for petitioner.
Sapalo Velez Bundang & Bulilan for respondents.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition for Review[1] is the October 30, 2009 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 106821 which denied petitioner Lucila Purificacion's (Lucila) claim for a 1,000-square meter lot as Disturbance Compensation in addition to the amount of ₱1,046,460.00 she

---

[1] *Rollo*, pp. 15-38.

[2] Id. at 39-53; penned by Associate Justice Jose Catral Mendoza (now retired member of this Court) and concurred in by Associate Justices Myrna Dimaranan-Vidal and Marlene Gonzales-Sison.

already received. Also assailed is the February 16, 2010 Resolution[3] of the CA denying Lucila's Motion for Reconsideration thereof.

The Antecedents

A 35,882 square meter parcel of agricultural land, covered by Transfer Certificate of Title (TCT) No. T-252445 (subject lot), located at Anabu I, Imus, Cavite, was formerly owned by Elmer Virgil Villanueva, Francis Andrew Villanueva, Mine-O Jeno Villanueva and Paul Frederick Villanueva (former landowners).[4]

Petitioner Lucila and her late husband, Jacinto Purificacion, (collectively, Purificacion spouses) were tenants in the foregoing subject lot.[5]

In May 1993, respondent Atty. Jaime Villanueva (Atty. Villanueva), representing the former landowners of the subject lot, sold 33,882[6] square meters of the subject lot to respondent Charles Gobing (Gobing) of Charles Builders, Inc. Respondent Gobing then converted the purchased lot into a residential subdivision called Gold Lane Subdivision.[7]

On July 1, 1993, Atty. Villanueva paid the Purificacion spouses a disturbance compensation amounting to ₱1,046,460.00.[8]

However, Lucila claimed that in addition to the foregoing amount, she and her late husband had a mutual agreement with Atty. Villanueva and Gobing (collectively, respondents) that they will relinquish their tenancy rights over the subject lot,

---

[3] CA *rollo*, pp. 329-330; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Fernanda Lampas Peralta and Michael P. Elbinias.

[4] *Rollo*, p. 40.

[5] Id.

[6] Id. at 41.

[7] Id. at 40.

[8] Id.

except the 1,000 square meter portion where their house is located, as part of the disturbance compensation. To support her claim, Lucila presented the following as evidence: (a) May 20, 1993 Letter;[9] and (b) an unnotarized Malayang Salaysay.[10] The relevant portions of said documents read:

A. Letter dated May 20, 1993 (May 1993 Letter):

Dear Mr. Gobing:

This is with [regard] to the ONE THOUSAND (1,000 sqm) portion of the property being allocated to the tenants, JACINTO and LUCILA PRUIFICATION.

This is to confirm our agreement that the said 1,000 square meters shall be allocated at the back portion of the whole property (33,882 sqm, TCT #T-252445) adjacent to the creek.

Thank you.

Very truly yours,
(Sgd.) ATTY. JAIME VILLANUEVA

Conforme

(Sgd.) CHARLES T. GOBING

B.) Unnotarized Malayang Salaysay:

Kami, sina JACINTO PURIFICA[C]ION at LUCILA PURIFICA[C]ION, mag-asawa, nasa hustong gulang, at nanirahan sa Anabu II, Imus, Cavite, matapos na manumpa ng naayon sa batas ay buong laya na nagsasalaysay ng mga sumusunod:

x x x x

Na magmula sa paglagda namin sa salaysay na ito ay hindi na kami muli pang papasok sa bukid nina G. ELMER VIRGIL S. VILLANUEVA, JR., FRANICS ANDREW M. VILLANUEVA, MINE-O JENO S. VILLANUEVA and PAUL FREDERICK M. VILLANUEVA;

---

[9] Id. at 261.

[10] CA *rollo*, p. 157.

Na isinasagawa namin ang lahat na ito kapalit ng Disturbance Compensation na halagang ISANG MILYON APATNAPU'T ANIM NA LIBO AT APAT NA RAAN ANIM NA PUNG PISO (₱1,046,460.00) at ISANG LIBONG METRO CUADRADONG (1,000 SQM) LUPA at kusang loob at walang sinumang tumakot o pumilit o nangako ng anuman pa sa amin.[11]

However, Lucila claimed that respondents did not fulfill their promise to give them 1,000 square meters of the subject lot. Instead, Gobing demanded Lucila to vacate the land.[12]

On January 3, 2000, Lucila filed a Complaint for Disturbance Compensation.[13] Lucila asserted that she and her late husband agreed to surrender their tenancy rights when the subject lot was sold because of their agreement with respondents that they will be paid disturbance compensation in the amount of ₱1,000,000.00 plus a 1,000 square meter lot, which is identified as Lot 13, Block 1 of the approved subdivision plan, covered by TCT No. T-463035, registered in the name of Charles Builders Co., Inc., represented by Gobing.[14]

Respondents mainly argued that Lucila has no legal right to demand an additional disturbance compensation of 1,000 square meters of land because she had already been well compensated on July 1, 1993 in the amount of ₱1,046,460.00, which was more than the amount she can legally claim for pursuant to Department of Agrarian Reform (DAR) Administrative Order (AO) No. 1, series of 1990.[15] Furthermore, respondents countered that based on the Malayang Salaysay of the Purificacion spouses themselves dated July 1, 1993, which was notarized on July 16, 1993 (Notarized Malayang Salaysay),[16] there was no mention

---

[11] Id.

[12] *Rollo*, p. 41.

[13] Id. at 269-271.

[14] Id. at 43.

[15] Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-Agricultural Uses. Approved: March 30, 1999.

[16] *Rollo*, p. 489.

about a 1,000 square meter portion to be given to them. The Notarized Malayang Salaysay partly reads:

> Kami, sina JACINTO PURIFICA[C]ION at LUCILA PURIFICA[C]ION, mag-asawa, nasa hustong gulang, at nanirahan sa Anabu II, Imus, Cavite, matapos na manumpa ng naayon sa batas ay buong laya na nagsasalaysay ng mga sumusunod:
>
> x x x x
>
> Na isinasagawa namin ang lahat na ito kapalit ng Disturbance Compensation na halagang ISANG MILYON APATNAPU'T ANIM NA LIBO AT APAT NA RAAN ANIM NA PUNG PISO (~~P~~1,046,460.00) at kusang loob at walang sinumang tumakot o pumilit o nangako ng anuman pa sa amin;[17]

Ruling of the Provincial Agrarian Reform Adjudicator (PARAD):

On February 9, 2001, the PARAD rendered a Decision[18] in favor of respondents herein, the dispositive portion of which reads:

> WHEREFORE, premises considered, Judgment is hereby rendered:
>
> 1. Finding the instant action devoid of merit for lack of sufficient factual basis and already barred by the Statute of Limitations having been commenced way beyond the three-year prescriptive period under Section 38, R.A. 3844, as amended. Accordingly, the instant complaint is hereby ordered DISMISSED.
>
> 2. Finding Complainant's occupancy of the premises identified as Lot 13, Blk. 1 unwarranted, wherefore, ordering said party and any/all person/s acting [under] her authority to vacate the same and relinquish its peaceful possession and enjoyment in favor of Defendant Charles T. Gobing, for the previous landowners Elmer Virgil, Jr., Francis Andrew, Min-O Jeno, and Paul Patrick, all surnamed Villanueva, represented by herein Defendant Atty. Jaime Villanueva in accordance with the Malayang Salaysay dated July 01, 1993 executed

---

[17] Id.

[18] Id. at 469-486.

by Complainant and her now deceased spouse Jacinto Purificacion; Consequently,

3. Ordering Complainant and any/all person/s acting under her authority to remove any/all such improvements and/or structures they might have introduced or constructed on the premises in question at their own expense; Except, if/when Complainant shall choose to move over to or re-settle in the vacant lot contiguous to and adjoining the rear end portion of Goldlane Subdivision outside its perimeter fence near the Creek, in which case, ... the Defendants shall jointly and severally extend/render such reasonable material assistance to said Party as shall be necessary in relocating her and her farm family.

No pronouncement as to damages, attorney's fees and cost of suit for failure of suitors to prove the same.

SO ORDERED.[19]

Aggrieved, Lucila moved for reconsideration.

On September 4, 2001, the PARAD issued its Order[20] reversing its earlier February 9, 2001 Decision. The dispositive portion of the Order reads:

WHEREFORE IN VIEW THEREFROM, the DECISION rendered dated February 9, 2001 is reversed in toto and instead a new judgment is entered and hereby rendered:

a.) Declaring Lot 13, Block 1 of the approved plan part of the subject land to be the lawful homelot of complainants [Purificacion Spouses] herein;

b.) Ordering the Defendants to surrender to plaintiff TCT No. T-463035 in the name of Charles Builders Co. Inc., as represented by Charles T. Gobing for the registration and transfer;

c.) Ordering respondents and all persons claiming rights under them to respect and maintain [complainants] in peaceful possession and occupancy of the homelot in question;

d.) Ordering the Register of Deeds, Trece Martires City, [to] transfer TCT No. T-463035 in the name of plaintiff Lucila Purificacion.

---

[19] Id. at 486.

[20] CA *rollo*, pp. 134-138.

No pronouncement as to costs and damages.

SO ORDERED.[21]

Respondents appealed the foregoing adverse Order to the Department of Agrarian Reform Adjudication Board (DARAB).

Ruling of the Department of Agrarian Reform Adjudication Board (DARAB).

In its April 8, 2008 Decision,[22] the DARAB reversed the PARAD's September 4, 2001 Order. The DARAB mainly held that: (a) the tenancy relation between Lucila and the owner of the subject lot has been severed when the land she once tenanted was converted from agricultural into non-agricultural land (*i.e.*, residential land). Thus, the essential requisite of tenancy, wherein the land subject of the relationship must be an agricultural land, is no longer present; (b) Section 36(1) of Republic Act (RA) No. 3844,[23] as amended, and DAR AO No. 1, series of 1990, hold that dispossessed tenants or displaced farmer-beneficiaries in view of the conversion of the lands into non-agricultural use, ought to be paid disturbance compensation equivalent to five times the average of the gross annual value of the harvest for the last five preceding calendar years. Thus, respondents have complied with their obligation to pay disturbance compensation since the ₱1,046,460.00 disturbance compensation paid to Lucila in July 1, 1993 is more than the amount required by the law, rules and regulations.[24]; (c) assuming for the sake of argument that Lucila is still entitled to disturbance compensation of 1,000 square meters, the same has already

---

[21] Id. at 137-138.

[22] *Rollo*, pp. 115-130.

[23] An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds Therefor and for Other Purposes. Approved: August 8, 1963.

[24] *Rollo*, p. 46.

prescribed. Section 38 of RA No. 3844 provides that any cause of action under said Code shall be barred if not commenced within three years after such cause of action accrued. Lucila's cause of action accrued in July 1993. However, it was only in January 2000, or after more than six years that she instituted the action;[25] *and* (d) the PARAD acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the Order dated February 9, 2001. The PARAD erred in ordering the surrender of TCT No. T-46035, which covers an area of 35, 882 square meters, in the name of Charles Builders Co., Inc. and in directing the Register of Deeds of Cavite to cancel the same and transfer it in the name of Lucila. Consequently, the PARAD awarded to Lucila the entire area of the subject lot or the whole Goldlane Subdivision, and yet Lucila was merely claiming for 1,000 square meters.[26]

In view of the foregoing, the DARAB struck down the September 4, 2001 Order of the PARAD for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.[27] The dispositive portion of the DARAB's Decision reads:

> WHEREFORE, premises considered, the assailed 04 September 2001 Order is hereby REVERSED and SET ASIDE and the 09 February 2001 Decision is hereby REINSTATED.[28]

Lucila moved for reconsideration of the foregoing Decision, which was denied in the DARAB's Resolution dated December 5, 2008.[29]

Lucila then filed an appeal with the CA via a Petition for Review under Rule 43 of the Rules of Court assailing the April 8, 2008 Decision of the DARAB.

---

[25] Id. at 48.

[26] Id. at 49.

[27] Id.

[28] Id. at 129.

[29] Id. at 131-132.

Ruling of the Court of Appeals:

In its October 30, 2009 Decision,[30] the appellate court upheld the findings of the DARAB. It noted that Lucila's action has already prescribed. It also held that even if the petition were filed on time, it remains bereft of merit since Lucila was already properly paid her disturbance compensation. The appellate court further held that the additional compensation she is claiming on the basis of an alleged promise by respondents was not substantially proved in evidence since the notarized July 16, 1993 Malayang Salaysay[31] did not contain any stipulation regarding additional compensation through a 1,000 square meter lot. Thus, the dispositive portion of said Decision reads:

WHEREFORE, the April 8, 2008 Decision of the Department of Agrarian Reform Adjudication Board is hereby **AFFIRMED**.

SO ORDERED.[32]

Lucila filed a Motion for Reconsideration,[33] which the CA denied in its February 16, 2010 Resolution.[34]

Our Ruling

We affirm the CA Decision, which upheld the ruling of the DARAB.

Lucila's action has prescribed.

Section 38 of RA No. 3844, otherwise known as the Agricultural Land Reform Code, provides:

SECTION 38. *Statute of Limitations*. — An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

---

[30] Id. at 39-53.

[31] CA *rollo*, p. 157.

[32] *Rollo*, p. 53.

[33] Id. at 54-63.

[34] CA *rollo*, pp. 329-330.

Section 2, Rule 2 of the Rules of Court defines a cause of action as the "act or omission by which a party violates a right of another". In the instant case, Lucila's cause of action arose when the Purificacion spouses executed the notarized Malayang Salaysay dated July 1, 1993. In the said document, the Purificacion spouses relinquished their tenancy rights in favor of the former landowners in exchange for ₱1,046,460.00, representing their disturbance compensation.[35]

On January 3, 2000, or more than six years from the time they acknowledged having received the foregoing amount as their disturbance compensation, Lucila filed the instant complaint and claimed that the payment of the said disturbance compensation was incomplete since Atty. Villanueva allegedly promised them a 1,000 square meter portion of the subject lot as an additional disturbance compensation.[36]

However, in view of the period prescribed under Section 38 of RA No. 3844, an action to enforce any cause of action under the Code shall be barred if not commenced within three years after such cause of action accrued.

Therefore, Lucila's present action is barred by prescription.

Lucila already received her own fair share of disturbance compensation.

This Court finds that even if the instant complaint were timely filed, the Petition remains unmeritorious.

Section 16 of DAR AO No. 1, series of 1990 provides that disturbance compensation shall be paid to tenant, farm workers or *bona fide* occupants affected by the land conversion:

SECTION 16. *Disturbance Compensation.* — (a) Disturbance compensation, in cash or in kind or both, shall be paid by the landowner or the developer, as may be appropriate, to tenants, farmworkers, as *bona fide* occupants to be affected by the conversion in such amounts

---

[35] *Rollo*, p. 51.

[36] *Id.*

or under such terms as may be mutually agreed upon between them and the landowner or the developer, but which shall not be less than five (5) times the average of the gross harvests on their landholding during the last five (5) preceding calendar years, pursuant to Section 36 of RA 3844, as amended by Section 7 of RA 6389, particularly in the case of tenants.

(b) Compensation in kind may consist of free housing, homelots, employment, and other benefits. The DAR shall approve the terms of any agreement for the payment of disturbance compensation and monitor compliance therewith. In no case shall compliance with the terms and conditions thereof extend beyond sixty (60) days from the date of approval of the application for conversion.

(c) In the event the parties do not agree on the amount of disturbance compensation, the issue may be brought by either of them before the DAR Adjudication Board for resolution pursuant to existing rules.

In view of the foregoing, this Court finds that respondents have already properly compensated Lucila in the amount of ₱1,046,460.00 as disturbance compensation. We cite in agreement the following findings of the DARAB:

Records show that [Lucila] Purificacion was paid ₱1,046,460.00 disturbance compensation on 01 July 1993. However, the records did not disclose how this amount was arrived at. Neither the plaintiff-appellee [Lucila] disclosed how much is the average annual harvest of the landholding. On the contrary[, respondents herein] averred that the ₱1,046,460.00 disturbance compensation paid to [Lucila] Purificacion was more than five (5) times the average of the gross value of the harvest for the five (5) preceding calendar years.

Assuming that the subject landholding then yielded an average gross harvest of 80 cavans per hectare per cropping, and there were two (2) cropping[s] per year, this Board agrees with the [respondents] that indeed the ₱1,046,460.00 disturbance compensation paid to [Lucila] Purificacion on 01 July 1993 is more than the amount required by law, rules and regulations. Thus, [respondents] have already complied with their obligation to pay disturbance compensation to [Lucila].[37]

---

[37] *Rollo*, p. 125.

We note that the DARAB and the appellate court had made identical and sound dispositions on the same issues posed by Lucila before them.

Well settled is the rule that findings of fact of administrative bodies, such as the DARAB in the instant case, if based on substantial evidence, and especially if affirmed by the appellate court, are controlling on the reviewing authority. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law, none of which obtains in this case.[38]

Notarized documents enjoy the presumption of regularity.

To support her claim, Lucila presented the May 20, 1993 Letter[39] and the Unnotarized Malayang Salaysay which has the same narration as the Notarized Malayang Salaysay,[40] except for the stipulation that Lucila is entitled to a 1,000-square meter portion of the subject lot.

This Court finds that the appellate court correctly held that the foregoing documents do not constitute substantial evidence that Lucila is entitled to claim the 1,000-square meter portion of the subject lot as disturbance compensation in addition to the ₱1,046,460.00 she already received.[41]

Firstly, the May 20, 1993 Letter from Atty. Villanueva to Gobing merely showed that respondents were considering the allocation of a 1,000-square meter portion within the subject lot for the Purificacion spouses, perhaps as the respondents' tentative plan for the spouses' disturbance compensation. As aptly held by the CA, said letter did not categorically grant the

---

[38] *Geronimo v. Commission on Audit*, G.R. No. 224163, December 4, 2018.

[39] *Rollo*, p. 261.

[40] CA *rollo*, p. 157.

[41] *Rollo*, p. 52.

1,000-square meter portion to the spouses.[42] It may indeed be part of the negotiations between the Purificacion spouses and the respondents regarding the disturbance compensation, since it was dated much earlier than the notarized Malayang Salaysay. However, said letter did not conclusively show that there was an agreement to grant a 1,000 square meter portion of the subject lot to Lucila as disturbance compensation in addition to the ₱1,046,460.00.

Secondly, the Notarized Malayang Salaysay is duly acknowledged before a notary public. Settled is the rule that a notarized document "has in its favor the presumption of regularity and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face."[43]

Being a notarized document, the Notarized Malayang Salaysay has in its favor the presumption of regularity, as opposed to the Unnotarized Malayang Salaysay. Thus, to overcome the presumption of regularity, "there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld."[44] In the instant case, Lucila's bare denials will not suffice to overcome the presumption of regularity of the assailed Notarized Malayang Salaysay.

WHEREFORE, the instant Petition for Review is **DENIED**. The assailed October 30, 2009 Decision and the February 16, 2010 Resolution of the Court of Appeals in C.A. G.R. SP No. 106821 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Leonen (*Chairperson*), *Delos Santos*, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

---

[42] Id.

[43] *Almeda v. Heirs of Almeda*, 818 Phil. 239, 256 (2017); *See also Abalos v. Heirs of Torio*, 678 Phil. 691, 703 (2011).

[44] *Abalos v. Heirs of Torio*, 678 Phil. 691, 703 (2011).

THIRD DIVISION

[G.R. No. 211327. November 11, 2020]

THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC., *Petitioner, v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; PRESIDENTIAL DECREE NO. 1869; PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR); TAXATION; INCOME TAXATION; TAX EXEMPTIONS; REPUBLIC ACT NO. 9337 (R.A. NO. 9337); ONLY PAGCOR'S INCOME FROM OTHER RELATED SERVICES WAS REMOVED BY R.A. NO. 9337 FROM INCOME TAX EXEMPTIONS.— The first and second issues essentially boil down to whether PAGCOR's income tax exemption under its charter, Presidential Decree No. 1869, is deemed repealed by Section 1 of Republic Act No. 9337, which amended Section 27 (c) of the National Internal Revenue Code of 1997 by removing PAGCOR from the list of government-owned or controlled corporations exempt from the corporate income tax.

This issue has already been settled in the 2014 case of *PAGCOR v. Bureau of Internal Revenue*, where this Court *En Banc* clarified the Decision in the 2011 *PAGCOR* case by ruling, among others, that only PAGCOR's income from other related services was removed from the tax privilege by Republic Act No. 9337.

. . .

In sum, this Court held that:

1. [PAGCOR's] tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1 (c) of R.A. No. 9337;

2. [PAGCOR's] income from gaming operations is subject to the five percent (5%) franchise tax only; and

3. [PAGCOR's] income from other related services is subject to corporate income tax only.

2. ID.; ID.; ID.; ID.; ID.; ID.; THE TAX EXEMPTION UNDER P.D. NO. 1869 IS AVAILABLE ONLY TO THOSE IN A CONTRACTUAL RELATIONSHIP WITH PAGCOR IN CONNECTION WITH ITS CASINO OPERATIONS.— The next question to be resolved is whether PAGCOR's income tax exemption, except the payment of 5% franchise tax, inures to the benefit of PAGCOR's contractees or licensees in connection with the operation of casinos. . . .

. . . [W]hile the tax exemption under Section 13 (2) (b) of Presidential Decree No. 1869 inures to the benefit of entities with whom PAGCOR has a contractual relationship, the law adds a qualification: this contractual relationship must be "in connection with the operations of the casino(s) authorized to be conducted under this Franchise[.]" Stated differently, the tax exemption is made available only to those in a contractual relationship with PAGCOR in connection with PAGCOR's casino operations.

3. ID.; ID.; ID.; ID.; ID.; ID.; R.A. NO. 9487; PAGCOR'S TAX EXEMPTION ON EARNINGS DERIVED FROM CASINO OPERATIONS DOES NOT EXTEND TO ITS LICENSEES.— Republic Act No. 9487, in amending Presidential Decree No. 1869, not only extended PAGCOR's franchise to operate casinos for another 25 years, but also granted PAGCOR the authority to license casinos and other gaming operations.

. . . The amendments merely pertained to giving PAGCOR the authority to issue licenses for casino operations. Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13(2)(b) and adding words such as "licensees of PAGCOR" and the like. There must be a positive provision, not merely a vague implication, of the law creating that exemption.

Presidential Decree No. 1869 was issued to centralize the operation of casinos into one corporate entity, PAGCOR. . . .

> . . . [W]hen the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.
>
> Under Section 13(2)(a), PAGCOR was granted tax exemption on earnings derived from its casino operations. This tax exemption was, under Section 13(2)(b), also extended to entities that have a contractual relationship with PAGCOR in connection with its operation of casinos.
>
> In other words, the clause "operations of the casino(s) authorized to be conducted under this Franchise" under Section 13(2)(b) referred to casinos operated by PAGCOR itself.
>
> The legislature, then, could not have envisioned that the clause would cover casinos operated by PAGCOR licensees since, at that time, PAGCOR had the sole and exclusive authority to operate casinos. Had that been its intention, Congress should have unequivocally provided in the amendatory law, Republic Act No. 9487, that tax exemptions extend to PAGCOR licensees.
>
> . . .
>
> Here, petitioner was authorized and licensed by PAGCOR to construct and operate a casino complex, by virtue of the April 11, 2006 Memorandum of Agreement and the October 31, 2006 License. Petitioner does not fall within the purview of Section 13(2)(b). Therefore, revenues derived by petitioner from its casino operations are not exempt from income tax.

4. TAXATION; TAX EXEMPTIONS; TAX EXEMPTIONS MUST BE STRICTLY CONSTRUED AND COUCHED IN CLEAR LANGUAGE.— [I]t is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that "if an exemption is found to exist, *it must not be enlarged by construction*, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all[.]"

5. ID.; INCOME TAXATION; PREFERENTIAL TAX RATE; POLITICAL LAW; REPUBLIC ACT NO. 7227 (THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992); PORO POINT FREEPORT ZONE (PPFZ); A PPFZ ENTERPRISE IS ENTITLED TO 5% PREFERENTIAL

TAX RATE ON ITS GROSS INCOME.— It is now undisputed that petitioner, as a Poro Point Special Economic and Freeport Zone enterprise, is entitled to the 5% preferential tax rate on its gross income earned pursuant to Section 5 of Proclamation No. 216, series of 1993, in relation to Section 12(c) of Republic Act No. 7227, or the Bases Conversion and Development Act of 1992.

We agree with the Court of Tax Appeals' ruling that Section 58 of the Implementing Rules and Regulations of Republic Act No. 7227 governs the manner of collection of the 5% preferential tax.

. . .

On March 20, 2007, Republic Act No. 9400 was approved. It amended certain provisions of Republic Act No. 7227, including the insertion of a new Section 15-A, thus: . . . .

. . .

> The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the PPFZ. *In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the PPFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.*

. . .

Thus, petitioner is liable to pay 5% of its gross income to the national government, subject to the condition provided in the Implementing Rules and Regulations of Republic Act No. 7227.

6. ID.; ID.; ID.; ID.; ID.; ID.; THE 5% INCOME TAX COLLECTED BY THE BUREAU OF INTERNAL REVENUE IS DISTINCT FROM THE 25% LICENSE FEE WHICH IS PAID BY VIRTUE OF THE LICENSE TO ESTABLISH AND OPERATE A CASINO AT THE PPFZ.— [T]he Court of Tax Appeals correctly rejected petitioner's argument that its payment of the 25% license fee is already inclusive of the 5% income tax. . . .

In consideration of the authority granted by PAGCOR to petitioner to establish and operate a casino at the Poro Point, petitioner agreed to pay a license fee to PAGCOR based on its gross revenues or earnings from casino operations. . . .

The 25% license fee is clearly distinct from the 5% income tax being collected by the Bureau of Internal Revenue. As clearly stated in the License, 25% of the gross gaming revenue is being paid by virtue of the License to establish and operate a casino at the Poro Point Special Economic and Freeport Zone. Nothing in the License's terms would show that such amount includes 5% income tax from petitioner's gaming operations.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF COURT; QUESTIONS OF FACTS ARE BEYOND THE SCOPE OF A JUDICIAL REVIEW UNDER RULE 45.— Petitioner further submits that it is not liable to pay deficiency expanded withholding taxes on rental payments in the total amount of ₱19,484,697.00 (instead of the ₱14,201,733.00 found by the Court of Tax Appeals) paid to the Poro Point Management Corporation and the Bases Conversion and Development Authority. . . .

. . . [A]ssertions [which] raise questions of facts that will entail an evaluation of evidence . . . are beyond the scope of a judicial review under Rule 45 of the Rules of Court. Settled is the rule that the factual findings of the Court of Tax Appeals are binding on this Court and can only be disturbed on appeal if not supported by substantial evidence.

. . .

The ₱19,484,697.00 amount of rental fees asserted by petitioner would require us to sift through all the evidence presented, a task that was for the lower courts to undertake, not this Court in a Rule 45 review. This Court's review power is generally limited to "cases in which only an error or question of law is involved." This Court cannot depart from this limitation if a party fails to invoke a recognized exception.

8. ID.; EVIDENCE; BURDEN OF PROOF; TAXATION; DEDUCTIONS OR EXEMPTIONS; A TAXPAYER HAS THE BURDEN OF PROVING ENTITLEMENT TO A

CLAIMED DEDUCTION OR EXEMPTION.— A taxpayer has the burden of proving entitlement to a claimed deduction or exemption. The pieces of evidence presented by petitioner have been extensively and judiciously examined by the Court of Tax Appeals, both in Division and *En Banc*.We affirm the Court of Tax Appeals in ruling that petitioner's entitlement to the claimed deduction or exemption was not adequately shown.

9. ID.; COURTS; COURT OF TAX APPEALS (CTA); THE FACTUAL FINDINGS OF THE CTA ARE GENERALLY ACCORDED THE HIGHEST RESPECT, BEING THE COURT SOLELY DEDICATED TO CONSIDERING TAX ISSUES.— This Court accords the highest respect to the Court of Tax Appeals' factual findings. We recognize its developed expertise on the subject, being the court solely dedicated to considering tax issues, unless there is a showing of abuse in the exercise of authority. We find no compelling reason to overturn its factual findings on the amounts of deficiency expanded withholding tax assessments.

10. TAXATION; THE 1997 NATIONAL INTERNAL REVENUE CODE; CIVIL PENALTIES IN DELINQUENCY CASES; SURCHARGES; STATUTORY CONSTRUCTION; WHERE THE TERMS OF THE STATUTE ARE CLEAR AND UNAMBIGUOUS, NO INTERPRETATION IS CALLED FOR, AND THE LAW IS APPLIED AS WRITTEN.— This Court finds the imposition of the 25% surcharge to be proper.

Section 248 (A) (3) of the 1997 National Internal Revenue Code, as amended, provides:

> SECTION 248. *Civil Penalties*.—
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> . . .
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment[.]

A fundamental rule of statutory construction is that "where the terms of the statute are clear and unambiguous, no

interpretation is called for, and the law is applied as written, for application is the first duty of courts, and interpretation [arises] only where literal application is impossible or inadequate."

11. ID.; ID.; ID.; IF THE DEFICIENCY TAX IS NOT PAID WITHIN THE DATE PRESCRIBED IN THE ASSESSMENT NOTICE, THE COLLECTION OF SURCHARGE AT THE RATE OF 25% ON THE AMOUNT DUE AND UNPAID IS MANDATORY.— Section 248 (A) (3) makes no distinctions nor establish exceptions. It directs the collection of the surcharge at the rate of 25% on the amount due and unpaid after the date prescribed in the assessment notice. The provision, therefore, is mandatory in case of delinquency.

. . .

It is clear that there is no 25% surcharge imposed in computing the deficiency tax assessment if paid on or before the date specified in the assessment notice. However, if the deficiency tax is not paid within the required period of time, the surcharge becomes automatically due.

APPEARANCES OF COUNSEL

Sarmiento Ventayen & Villaruz for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Strictly construed, Section 13 (2) (b) of Presidential Decree No. 1869 means that the Philippine Amusement and Gaming Corporation (PAGCOR)'s income tax exemptions only extend to entities or individuals in a contractual relationship with PAGCOR in connection with its casino operations. A PAGCOR licensee authorized to operate its own casino does not fall within the purview of Section 13 (2) (b). Its income from its casino operations, therefore, is not tax-exempt.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] of the Court of Tax Appeals *En Banc*,which affirmed the Decision[3] and Resolution[4] of the First Division. The Court of Tax Appeals found Thunderbird Pilipinas Hotels and Resorts, Inc. (Thunderbird Pilipinas) liable for deficiency income and expanded withholding taxes totaling ₱17,929,817.09, inclusive of surcharge and interest, plus delinquency interest of 20% from April 10, 2009 until full payment.

Thunderbird Pilipinas is a domestic corporation with address at VOA Pennsylvania Avenue, Poro Point, San Fernando City, La Union. It is registered with the Poro Point Management Corporation as a Poro Point Special Economic and Freeport Zone enterprise.[5]

Thunderbird Pilipinas operates a casino and resort complex within the Poro Point Special Economic and Freeport Zone in San Fernando City, La Union by virtue of the Memorandum of Agreement[6] dated April 11, 2006 and the License[7] dated October 31, 2006 issued by PAGCOR.

---

[1] *Rollo*, pp. 11-112. Filed under Rule 45.

[2] Id. at 158-181; The January 29, 2014 Decision was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr.,Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban.

[3] Id. at 114-149; The Decision dated July 18, 2012 was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.

[4] Id. at 150-156. The Resolution dated December 11, 2012 was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino.

[5] Id. at 159. *See also* PPSEFZ Enterprise Certificate No. 2006-01 dated April 7, 2006 (*rollo*, p. 212) and PPFZ Enterprise Certificate No. 2007-03 dated April 7, 2007 (*rollo*, p. 277).

[6] Id. at 183-196.

[7] Id. at 202-211.

On April 16, 2007, Thunderbird Pilipinas filed its annual income tax return for taxable year 2006 with the BIR RDO No. 3, Revenue Region No. 1. Its 2006 income tax return showed a deferred rent expense of ₱14,201,733.00 as a reconciling item on the company's net income per books against its taxable income.[8]

On November 19, 2008, the Bureau of Internal Revenue, through the Office of the Regional Director, Revenue Region No. 1 (Calasiao, Pangasinan), issued Assessment Notice Nos. IT-03-06-241-973-218 and WE-03-06-241-973-218 for deficiency income tax and expanded withholding tax, respectively, together with a Formal Letter of Demand against Thunderbird Pilipinas.[9]

The Bureau of Internal Revenue assessed Thunderbird Pilipinas for deficiency taxes in the aggregate amount of ₱15,331,711.00, inclusive of interest and penalties,[10] computed as follows:

I. Income Tax	
Gross taxable income per Return	₱151,683,405.43
Add: Purchases Paid not in the name of Thunderbird	11,068,373.43
Taxable Income	162,751,778.43
Tax Due	8,137,588.92
Less: Basic Tax Paid	553,418.67
Basic Income Tax Deficiency	7,584,170.25
Interest (4.16.07 to 10.30.08)	2,333,431.01
Total Deficiency Income Tax	**9,917,601.26**
II. Expanded Withholding Tax	
Deficiency Withholding Tax on Outside Services	38,305.93
Deficiency Withholding Tax on Rent	1,134,402.22
Deficiency Withholding Tax on Legal and Professional Fees	759,895.33

[8] Id. at 159.

[9] Id.

[10] Id. at 116.

Deficiency Withholding Tax on Marketing and Promotions		62,761.90
Deficiency Withholding Tax on Director's Fee		10,279.99
Deficiency Withholding Tax on Management Fee		1,979,199.86
Total Expanded Withholding Tax Deficiency		3,984,845.23
Add: Interest (1.16.07 to 10.30.08)	₱1,425,264.51	
Compromise Penalty (No January to March 1601-E and 1604-E with Alphabetical List of Payees	4,000.00	1,429,264.51
Total Deficiency Expanded Withholding Tax		**P 5,414,109.74**
Total Tax Deficiency		**P15,331,711.00**[11]

Thunderbird Pilipinas protested the assessments through a letter dated December 23, 2008 and a supplemental protest dated February 18, 2009. The protest was denied by the Regional Director.[12]

On March 30, 2009, Thunderbird Pilipinas received a collection letter from the Revenue District Officer of San Fernando City, La Union, directing the payment of the assessed tax within 10 days from receipt. Thunderbird Pilipinas replied on April 1, 2009 that it would appeal the Regional Director's decision to the Court of Tax Appeals and requested for deferment of the collection.[13]

On April 3, 2009, Thunderbird Pilipinas filed its Petition for Review before the Court of Tax Appeals,[14] seeking to cancel the deficiency income and expanded withholding tax assessments for 2006.[15]

In his Answer, the Commissioner of Internal Revenue interposed the following defenses, among others:

---

[11] Id.

[12] Id. at 160.

[13] Id.

[14] Id.

[15] Id. at 12.

1. Thunderbird Pilipinas failed to submit the documents as required in the letters dated September 21, 2007, October 23, 2007, and December 17, 2007;[16]
2. Thunderbird Pilipinas was assessed deficiency income and expanded withholding taxes based on the best evidence obtainable;[17]
3. Its protest on the assessments was denied for lack of supporting documentary evidence;[18] and
4. It was afforded due process in the assessment of its tax liabilities for 2006.[19]

Upon motion and posting of surety bond, the Court of Tax Appeals on November 13, 2009 enjoined the Commissioner of Internal Revenue from collecting the deficiency taxes.[20]

Trial followed. Both parties presented their respective evidence and memoranda, and the case was later submitted for decision.[21]

On July 18, 2012, the Court of Tax Appeals First Division rendered its Decision,[22] finding Thunderbird Pilipinas liable for deficiency income and expanded withholding taxes. It held that since PAGCOR was no longer exempt from income tax, pursuant to the rulings in *Abakada Guro Party List v. Ermita*[23] and *PAGCOR v. Bureau of Internal Revenue*,[24] Thunderbird Pilipinas — a the licensee/contractee of PAGCOR — is likewise

---

[16] Id. at 161-162.

[17] Id. at 167.

[18] Id. at 164-165.

[19] Id. at 166.

[20] Id. at 168.

[21] Id.

[22] Id. at 114-149.

[23] 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].

[24] 660 Phil. 636 (2011) [Per J. Peralta, En Banc].

subject to income tax from its casino operations.[25] For lack of evidence, it also rejected Thunderbird Pilipinas's contention that it was not liable for deficiency expanded withholding tax.[26] The dispositive portion of its Decision reads:

WHEREFORE, premises considered, the assessments against petitioner covering deficiency income tax and EWT for taxable year 2006 are hereby **AFFIRMED** with some modifications.

Accordingly, petitioner is hereby **ORDERED** to pay respondent deficiency income tax and EWT for taxable year 2006 in the respective amounts of **P12,488,946.65 and P5,440,870.44**, inclusive of 25% surcharge and 20% deficiency interest imposed pursuant to Section 248(A)(3) and 249(B) of the NIRC of 1997, computed as follows:

Deficiency Income Tax	
Basic Tax Due	P7,584,170.25
Add: 25% Surcharge	1,896,042.56
20% Interest (04/16/07 to 04/09/09)	3,008,733.84
Total Amount Due	**P12,488,946.65**
Deficiency EWT	
Basic Tax Due	P3,208,008.58
Add: 25% Surcharge	802,002.15
20% Interest (01/16/07 to 04/09/09)	1,430,859.72
Total Amount Due	**P5,440,870.44**
GRAND TOTAL — DEFICIENCY INCOME TAX AND EWT	**P17,929,817.09**

Likewise, petitioner is **ORDERED** to pay delinquency interest at the rate of 20% per annum on the total deficiency taxes of **₱17,929,817.09** computed from April 10, 2009 until full payment thereof pursuant to Section 249(C)(3) of the 1997 NIRC.

SO ORDERED.[27] (Emphasis in the original)

---

[25] *Rollo*, pp. 128-134.

[26] Id. at 138-139; and 142-147.

[27] Id. at 148-149.

Thunderbird Pilipinas moved for reconsideration, but the First Division denied it in a December 11, 2012 Resolution.[28]

On appeal, the Court of Tax Appeals *En Banc* affirmed in its January 29, 2014 Decision[29] the First Division's rulings.

Hence, Thunderbird Pilipinas filed this Petition. In compliance with this Court's July 9, 2014 Resolution,[30] respondent Commissioner of Internal Revenue filed a Comment,[31] to which petitioner filed its Reply.[32]

Petitioner argues that the 2005 case of *Abakada Guro Party List v. Ermita*[33] and the 2011 case of *PAGCOR v. Bureau of Internal Revenue*[34] did not effectively repeal the tax exemptions of PAGCOR under Presidential Decree No. 1869.[35]

It asserts that the opinion in *Abakada* that PAGCOR was no longer exempt from income tax is a mere *obiter dictum*, and thus, not binding.[36] As for *PAGCOR*, it claims that the ruling must be revisited,[37] because Republic Act No. 9337 is not the proper legislative procedure to repeal PAGCOR's income tax exemption privilege.[38] It argues that Republic Act No. 9337, a general law on the income taxation of all government-owned or controlled corporations, did not repeal Presidential Decree No. 1869, a special law referring only to PAGCOR.[39] It finds

---

[28] Id. at 150-156.

[29] Id. at 158-181.

[30] Id. at 486.

[31] Id. at 496-514.

[32] Id. at 522-537.

[33] 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].

[34] 660 Phil. 636 (2011) [Per J. Peralta, En Banc].

[35] *Rollo*, p. 29.

[36] Id.

[37] Id. at 57.

[38] Id. at 40.

[39] Id. at 43.

no clear repugnancy between the two laws,[40] noting that Republic Act No. 9937 did not include the pertinent provisions of Presidential Decree No. 1869 in the list of laws it repeals.[41]

Even if the ruling in the *PAGCOR* case were to be upheld, petitioner argues that it must be applied prospectively,[42] because it reversed the standing doctrine in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*[43] on the blanket exemption of PAGCOR from taxes.[44] Petitioner insists that at the time it filed its 2006 tax returns, the controlling ruling was *Acesite*, which was promulgated in 2007 after the enactment of Republic Act No. 9337 in 2005.[45]

Furthermore, petitioner asserts that it is not affected by the 2011 *PAGCOR* ruling, because it was not a party to the case, and it is a mere PAGCOR contractee.[46] Petitioner points out that it was only in Revenue Memorandum Circular No. 33-2013,[47] effective April 17, 2013, where the licensees and contractees of PAGCOR were declared liable for income tax.[48] If at all, petitioner contends, PAGCOR should be the one to pay the deficiency income tax, based on their Memorandum of Agreement.[49]

Assuming that it was liable for income tax, petitioner says it is only liable to pay 3% of its gross income to the national

---

[40] Id. at 54.

[41] Id. at 49.

[42] Id. at 57.

[43] 545 Phil. 1 (2007) [Per J. Velasco, Jr.,Second Division].

[44] *Rollo*, p. 60.

[45] Id. at 59.

[46] Id. at 66.

[47] Entitled, "Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees."

[48] *Rollo*, p. 69.

[49] Id. at 75-76.

government, instead of 5%, as it is registered as a Poro Point Special Economic and Freeport Zone enterprise. In any case, it submits that its payment to PAGCOR of 25% license fee on gross gaming revenue for the period from April 28 to December 31, 2006 is essentially payment of the 5% gross income earned.[50]

Finally, petitioner claims that it is not liable for deficiency expanded withholding tax on payments of fees to Fortun Narvasa & Salazar Law Firm and Punongbayan & Araullo, rental fees to Poro Point Management Corporation, and management fees for services rendered by Thunderbird Resorts, Inc. It also maintains that the 25% surcharge imposed by the Court of Tax Appeals has no basis in law and in fact.[51]

In her comment,[52] respondent asserts that the pronouncement in the 2011 *PAGCOR* case merely interpreted Section 1 of Republic Act No. 9337, specifically the removal of PAGCOR's exemption from income tax.[53] Hence, it is deemed part of the law as of the date of its passage.[54] Respondent further asserts that petitioner failed to present substantial evidence to show: (1) that the payment of 25% license fee is inclusive of the 5% income tax;[55] and (2) that petitioner is not subject to deficiency expanded withholding taxes on rental payments, legal and professional fees, and management fees.[56]

For resolution are the following issues:

First, whether or not the Decision in the 2011 case of *PAGCOR v. Bureau of Internal Revenue* should be applied prospectively;

---

[50] Id. at 84.

[51] Id. at 85-96.

[52] Id. at 496-514.

[53] Id. at 504.

[54] Id. at 505.

[55] Id. at 507.

[56] Id. at 508-510.

Second, assuming that the 2011 *PAGCOR* case may be applied retroactively, whether or not it is binding on petitioner Thunderbird Pilipinas Hotels and Resorts, Inc., a licensee of PAGCOR;

Third, whether petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is liable for deficiency income tax for taxable year 2006;

Fourth, assuming that petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is subject to income tax, whether or not it is liable to pay only 3% of its gross income to the national government instead of 5% pursuant to its registration as a Poro Point Special Economic and Freeport Zone enterprise;

Fifth, whether or not its payment to PAGCOR of 25% of its gross gaming revenue can be applied against its deficiency income tax;

Sixth, whether or not petitioner Thunderbird Pilipinas Hotels and Resorts, Inc. is liable for deficiency expanded withholding tax on legal fees paid to Fortun Narvasa & Salazar Law Office and Punongbayan & Araullo, rental payments to Poro Point Management Corporation, and management fees paid to Thunderbird Resorts, Inc.; and

Seventh, whether or not the 25% surcharge imposed by the Court of Tax Appeals on alleged deficiency taxes is valid.

The Petition is denied.

I

The first and second issues essentially boil down to whether PAGCOR's income tax exemption under its charter, Presidential Decree No. 1869,[57] is deemed repealed by Section 1[58] of Republic

---

[57] SECTION 13. *Exemptions*.—

(1) *Customs Duties, Taxes and Other Imposts on Importations*.— ...

(2) *Income and Other Taxes*.— (a) Franchise Holder: *No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under*

Act No. 9337,[59] which amended Section 27 (c)[60] of the National Internal Revenue Code of 1997 by removing PAGCOR from the list of government-owned or controlled corporations exempt from the corporate income tax.

---

this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies),or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax. (Emphasis supplied)

[58] SECTION 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 27. *Rates of Income Tax on Domestic Corporations*.—

. . . .

(C) *Government-owned or -Controlled Corporations, Agencies or Instrumentalities*.— The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, *except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO)*, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity. (Emphasis supplied)

[59] Value-Added Tax (VAT) Reform Act, May 24, 2005.

[60] SECTION 27. *Rates of Income tax on Domestic Corporations*.—

. . . .

This issue has already been settled in the 2014 case of *PAGCOR v. Bureau of Internal Revenue*,[61] where this Court *En Banc* clarified the Decision in the 2011 *PAGCOR* case by ruling, among others, that only PAGCOR's income from other related services was removed from the tax privilege by Republic Act No. 9337.

To recall, in the 2011 *PAGCOR* case, this Court *En Banc*, in a March 15, 2011 Decision, upheld the validity of Section 1 of Republic Act No. 9337. It ruled that the withdrawal of PAGCOR's exemption from corporate income tax by Section 1 of Republic Act No. 9337 was not repugnant to the equal protection and non-impairment clauses of the Constitution.[62]

Following the March 15, 2011 Decision, the Bureau of Internal Revenue issued Revenue Memorandum Circular No. 33-2013 on April 17, 2013, entitled, "Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees."[63] This circular stated that: (1) PAGCOR's income from licensing of casinos, gaming, and other related operations, as well as other income not connected to its casino operations, are subject to corporate income tax; and (2) PAGCOR is subject to a 5% franchise tax on its gaming and other related operations.[64]

(C) Government-owned or Controlled Corporations, Agencies or Instrumentalities — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, *except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR),* shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity ... (Emphasis supplied)

[61] 749 Phil. 1010 (2014) [Per J. Peralta, En Banc].

[62] Id. at 1014.

[63] Id. at 1017.

[64] Id. at 1017-1020.

PAGCOR requested for a reconsideration of the tax treatment of its income from casino, gaming, and other related operations, but its request was denied by the Commissioner of Internal Revenue.[65]

Consequently, PAGCOR filed a Motion for Clarification before this Court. It argued that Revenue Memorandum Circular No. 33-2013 was an erroneous interpretation and application of the March 15, 2011 Decision, and sought to clarify the following:

1. Whether PAGCOR's tax privilege of paying 5% franchise tax *in lieu* of all other taxes with respect to its gaming income, pursuant to its Charter — P.D. 1869, as amended by R.A. 9487, is deemed repealed or amended by Section 1 (c) of R.A. 9337.

---

[65] *Id.* at 1020.

RMC 33-2013 classifies the income of PAGCOR as follows:

1. PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, includes, among others:
(a) Income from its casino operations;
(b) Income from dollar pit operations;
(c) Income from regular bingo operations; and
(d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.
2. *Income from "other related operations"* includes, but is not limited to:
(a) Income from licensed private casinos covered by authorities to operate issued to private operators;
(b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
(c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
(d) Income from private poker operations;
(e) Income from junket operations;
(f) Income from SM demo units; and
(g) Income from other necessary and related services, shows and entertainment. (Emphasis supplied)

2. If it is deemed repealed or amended, whether PAGCOR's gaming income is subject to both 5% franchise tax and income tax.

3. Whether PAGCOR's income from operation of related services is subject to both income tax and 5% franchise tax.

4. Whether PAGCOR's tax privilege of paying 5% franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR in connection with the operation of casinos.[66] (Citation omitted)

In a November 25, 2014 Resolution, this Court resolved to treat the Motion for Clarification as a new Petition for Certiorari under Rule 65 of the Rules of Court.[67]

After the submission of the parties' respective pleadings and payment of appropriate docket fees, this Court *En Banc* promulgated its Decision on December 10, 2014, declaring that PAGCOR's "income from gaming operations is subject only to five percent (5%) franchise tax under [Presidential Decree No.] 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to [Presidential Decree No.] 1869, as amended, as well as [Republic Act] No. 9337."[68]

This Court noted that under Presidential Decree No. 1869, as amended, PAGCOR's income is classified into two: "(1) income from its operations conducted under its Franchise, pursuant to Section 13 (2) (b) *(income from gaming operations)*; and (2) income from its operation of necessary and related services under Section 14 (5) thereof *(income from other related services)*."[69]

This Court held that the income tax exemption under Section 27 (c) of the 1997 National Internal Revenue Code, which was

---

[66] Id. at 1021.

[67] Id. at 1015.

[68] Id. at 1022.

[69] Id. at 1021.

subsequently withdrawn by Republic Act No. 9337, could only pertain to PAGCOR's income from other related services:

First. Under P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27 (c) of R.A. No. 8424 clearly pertains only to petitioner's income from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended[.]

. . . .

In other words, there was no need for Congress to grant tax exemption to petitioner with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. . . .

. . . .

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.

As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; (2) *income tax* for income realized from other necessary and related services, shows and entertainment of petitioner. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

. . . .

Third. Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of petitioner's

income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general. . . .

. . . .

. . . we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of its gaming income, then Section 13 (2) (a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24 (a) (b) of R.A. No. 9337[.]

. . . .

When petitioner's franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of petitioner's rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of petitioner's franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:

> SECTION 2. *Repealing Clause*. — All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.[70] (Citations omitted)

---

[70] Id. at 1022-1026.

In sum, this Court held that:

1. [PAGCOR's] tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1 (c) of R.A. No. 9337;

2. [PAGCOR's] income from gaming operations is subject to the five percent (5%) franchise tax only; and

3. [PAGCOR's] income from other related services is subject to corporate income tax only.[71] (Emphasis in the original)

Accordingly, this Court ordered the Commissioner of Internal Revenue to desist from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposes: (1) corporate income tax on PAGCOR's income derived from its gaming operations; and (2) franchise tax on PAGCOR's income from other related services.

II

The next question to be resolved is whether PAGCOR's income tax exemption, except the payment of 5% franchise tax, inures to the benefit of PAGCOR's contractees or licensees in connection with the operation of casinos. This Court *En Banc* refused to pass upon this question in the 2014 Decision, saying that the case was "limited to clarifying the tax treatment of [PAGCOR's] income *vis-à-vis* our Decision dated March 15, 2011."[72]

The pertinent legal provision is Section 13 of Presidential Decree No. 1869, which states:

SECTION 13. *Exemptions*.—

. . . .

(2) Income and other taxes. — (a) Franchise Holder: *No tax of any kind or form, income or otherwise, as well as fees, charges or levies*

---

[71] Id. at 1028-1029.

[72] Id. at 1028.

of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, *except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise*. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: *The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies,* ***shall inure to the benefit of and extend to corporation(s), association(s), agency(ies),or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.*** (Emphasis supplied)

The proper interpretation of Section 13 (2) (b) can be found in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*.[73] In that case, respondent Acesite incurred value-added tax on its rental income and sales of food and beverages to PAGCOR relative to the latter's casino operations. Acesite tried to shift the tax to PAGCOR, but the latter refused to pay. Later, Acesite filed a claim for refund with the Bureau of Internal Revenue, asserting that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. Upon the Bureau of Internal Revenue's inaction, Acesite filed a petition before the Court of Tax Appeals.[74]

Agreeing with Acesite, the Court of Tax Appeals held that Acesite's gross income from rentals and sales to PAGCOR is subject to 0% tax, as PAGCOR is a tax-exempt entity by virtue

---

[73] 545 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division].

[74] Id. at 6.

of a special law. The Court of Appeals affirmed the Court of Tax Appeals' ruling. It held that "PAGCOR was not only exempt from direct taxes but was also exempt from indirect taxes like the [value-added tax] and consequently, the transactions between respondent Acesite and PAGCOR were 'effectively zero-rated' because they involved the rendition of services to an entity exempt from indirect taxes."[75]

On the Commissioner of Internal Revenue's petition for review, this Court held that PAGCOR's tax exemption privilege includes the indirect tax of value-added tax, such that Acesite is entitled to 0% value-added tax rate:

> A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:
>
> > Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, *PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations*. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. *In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations*. The unmistakable conclusion is that PAGCOR is not liable for the P30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3). R.A. 8424[.]
>
> Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. *Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.*[76] (Emphasis supplied)

---

[75] Id. at 7.

[76] Id. at 9.

This Court further explained that the rationale for Section 13 (2) (b), in extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is to proscribe any indirect tax, like value-added tax, that may be shifted to PAGCOR:

> The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.* where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. Thus, *the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR*.[77] (Emphasis supplied, citation omitted)

Indeed, the presumption is that an exemption from "*all taxes*" or the exempting "*in lieu of all taxes*" clause embraces only those taxes for which the taxpayer is directly liable, unless the exempting statute specifically includes indirect taxes that are shifted to the taxpayer as part of the purchase price.[78] Section 13 (2) (b) of Presidential Decree No. 1869 is one such provision specifically granting exemption from indirect taxes.

Tax exemptions are strictly construed against the taxpayer.[79] For an exemption to be deemed conferred, it must be clearly and distinctly stated in the language of the law.[80] Tax exemptions

---

[77] Id. at 10-11.

[78] *CIR v. Philippine Long Distance Telephone Co.*, 514 Phil. 255 (2005) [Per J. Garcia, Third Division].

[79] Id. at 268.

[80] *Philippine Acetylene Co., Inc. v. CIR*, 127 Phil. 461, 472 (1967) [Per J. Castro, En Banc].

"are not to be extended beyond the ordinary and reasonable intendment of the language actually used by the legislative authority in granting the exemption."[81]

Nonetheless, while the tax exemption under Section 13 (2) (b) of Presidential Decree No. 1869 inures to the benefit of entities with whom PAGCOR has a contractual relationship, the law adds a qualification: this contractual relationship must be "in connection with the operations of the casino(s) authorized to be conducted under this Franchise[.]" Stated differently, the tax exemption is made available only to those in a contractual relationship with PAGCOR in connection with PAGCOR's casino operations.

We are not unmindful of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,[82] which declared that under Section 13 (2) (b), all contractees and licensees of PAGCOR are likewise exempt from all other taxes, including corporate income tax, on earnings realized from the operation of casinos.

In that case, Bloomberry, a grantee of a provisional license to operate a casino on April 8, 2009, was required by the Bureau of Internal Revenue to pay income tax pursuant to Revenue Memorandum Circular No. 33-2013. Bloomberry sought to annul Revenue Memorandum Circular No. 33-2013 in a petition for *certiorari* and prohibition directly filed before this Court.[83] Ruling in Bloomberry's favor, this Court held that PAGCOR contractees and licensees are exempt from taxes on income derived from their casino operations, pursuant to Section 13 (2) (b) of Presidential Decree No. 1869. This Court stated:

> Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:
>
> . . . .

---

[81] *Paper Industries Corp. v. Court of Appeals*, 321 Phil. 1, 34 (1995) [Per J. Feliciano, En Banc].

[82] 792 Phil. 751 (2016) [Per J. Perez, Third Division].

[83] Id. at 753-754.

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.*, Section 1 of R.A. No. 9337 which amended Section 27 (C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

. . . .

As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, *shall inure to the benefit of and extend to* corporation(s), association(s), agency(ies),or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.[84] (Emphasis supplied, citations omitted)

Accordingly, this Court in *Bloomberry* ordered the Commissioner of Internal Revenue to desist from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposed corporate income tax on Bloomberry's income derived from its gaming operations.[85]

Bloomberry, however, is not squarely congruent with this case. The facts in *Bloomberry* occurred after amendments to Presidential Decree No. 1869 were introduced by Republic Act No. 9487, which took effect in 2007. This case, on the other hand, pertains to petitioner's tax liabilities for taxable year 2006.

Republic Act No. 9487, in amending Presidential Decree No. 1869, not only extended PAGCOR's franchise to operate casinos for another 25 years, but also granted PAGCOR the

---

[84] Id. at 766-768.

[85] Id. at 768.

authority to license casinos and other gaming operations. Thus, although not specifically mentioned or explained, *Bloomberry* may have been resolved in light of this amendatory law.

A more deliberate reading of Section 13 (2) (b) of Presidential Decree No. 1869 and the amendments under Republic Act No. 9487 provides more formidable support for the conclusion in this case. The amendments merely pertained to giving PAGCOR the authority to issue licenses for casino operations. Had Congress also intended to extend the tax exemptions to PAGCOR licensees, it could have easily done so by expanding Section 13 (2) (b) and adding words such as "licensees of PAGCOR" and the like. There must be a positive provision, not merely a vague implication, of the law creating that exemption.

Presidential Decree No. 1869[86] was issued to centralize the operation of casinos into one corporate entity, PAGCOR. Section 1 states:

> SECTION 1. *Declaration of Policy*.— It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:
>
> *(a) To centralize and integrate the right and authority to operate and conduct games of chance into* ***one corporate entity*** *to be controlled, administered and supervised by the Government;*
>
> (b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: (1) generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, Tulungan ng Bayan Centers, Nutritional

[86] Consolidating and Amending Presidential Decree Nos. 1067-a, 1067-b, 1067-c, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).

> Programs, Population Control and such other essential public services; (2) create recreation and integrated facilities which will expand and improve the country's existing tourist attractions; and (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement. (Emphasis supplied)

Thus, when the tax exemptions were granted under Section 13 of Presidential Decree No. 1869, the legislature contemplated a scenario where the casino operations would be centralized under the sole and exclusive authority of PAGCOR.

Under Section 13 (2) (a), PAGCOR was granted tax exemption on earnings derived from its casino operations. This tax exemption was, under Section 13 (2) (b), also extended to entities that have a contractual relationship with PAGCOR in connection with its operation of casinos.

In other words, the clause "operations of the casino(s) authorized to be conducted under this Franchise" under Section 13 (2) (b) referred to casinos operated by PAGCOR itself.

The legislature, then, could not have envisioned that the clause would cover casinos operated by PAGCOR licensees since, at that time, PAGCOR had the sole and exclusive authority to operate casinos. Had that been its intention, Congress should have unequivocally provided in the amendatory law, Republic Act No. 9487, that tax exemptions extend to PAGCOR licensees.

As stated earlier, it is a settled rule that tax exemptions are strictly construed and must be couched in clear language. This Court has held that "if an exemption is found to exist, *it must not be enlarged by construction,* since the reasonable presumption is that the state has granted in express terms all it intended to grant at all[.]"[87]

---

[87] *CIR v. Philippine Long Distance Telephone Co.*, 514 Phil. 255, 272 (2005) [Per J. Garcia, Third Division].

Again, the ruling in *Acesite*[88] is more applicable.

There, this Court construed Section 13 (2) of Presidential Decree No. 1869 to resolve the issue of "whether PAGCOR's tax exemption privilege includes the indirect tax of VAT to entitle Acesite to zero percent (0%) [value-added tax] rate."[89] Upon examining Section 13 (2), this Court ruled that PAGCOR is exempt from both direct taxes (under paragraph a) and indirect taxes (under paragraph b). It categorically explained that "*the proviso in [Presidential Decree No.] 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like [value-added tax], that may be shifted to PAGCOR.*"[90] Ultimately, the tax exemptions granted under Section 13 were primarily meant to favor only PAGCOR, and not any other entity.

Thus, following this Court's pronouncement in *Acesite*, we construe Section 13 (2) (b) of Presidential Decree No. 1869 to mean that ***the tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR in connection with PAGCOR's casino operations. The exemption does not include private entities that were licensed to operate their own casinos***.

Here, petitioner was authorized and licensed by PAGCOR to construct and operate a casino complex, by virtue of the April 11, 2006 Memorandum of Agreement[91] and the October 31, 2006 License.[92] Petitioner does not fall within the purview of Section 13 (2) (b).Therefore, revenues derived by petitioner from its casino operations are not exempt from income tax.

---

[88] *CIR v. Acesite (Philippines) Hotel Corp.*, 545 Phil. 1 (2007) [Per J. Velasco, Jr., Second Division].

[89] Id. at 7.

[90] Id. at 11.

[91] *Rollo*, pp. 183-196.

[92] Id. at 202-211.

III

Petitioner contends that even if it were liable for income tax, it is only liable to pay 3%, instead of 5%, of its gross income to the national government. Moreover, it says its payment to PAGCOR of 25% license fee on gross gaming revenue for the period from April 28 to December 31, 2006 is essentially the payment of the 5% of gross income earned.[93]

It is now undisputed that petitioner, as a Poro Point Special Economic and Freeport Zone enterprise, is entitled to the 5% preferential tax rate on its gross income earned pursuant to Section 5[94] of Proclamation No. 216, series of 1993, in relation to Section 12 (c)[95] of Republic Act No. 7227, or the Bases Conversion and Development Act of 1992.

---

[93] Id. at 84.

[94] SECTION 5. *Investment Climate in the Poro Point Special and Economic and Freeport Zone*. — Pursuant to Section 5 (m) and Section 15 of R.A. 7227, BCDA shall promulgate all necessary policies, rules and regulations governing Poro Point including investment incentives, in consultation with the local government units and pertinent government departments for implementation by BCDA. Among others, *Poro Point shall have all the applicable incentives in the Subic Special Economic and Freeport Zone under R.A. 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investment Code of 1987, the Foreign Investment Act of 1991 and new investment laws which may hereinafter be enacted*. (Emphasis supplied)

[95] (c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

We agree with the Court of Tax Appeals' ruling that Section 58 of the Implementing Rules and Regulations[96] of Republic Act No. 7227 governs the manner of collection of the 5% preferential tax.[97] Section 58 states:

> SECTION 58. *Returns and Payment of Tax.*—
>
> . . . .
>
> c. Payment of the Tax. —
>
> (1) *The amount representing the five (5%) percent final tax of the gross income earned* by the SBF Enterprise directly from the operation of its registered activity *shall be paid at the same time the return is filed with the Revenue District Officer or the collecting agent/accredited bank* in the City of Olongapo; provided, that (i) 1% of the above amount shall be allocated to the representative local government units affected by the declaration of the SBF in accordance with the formula set forth in Section 57 (a) of these Rules, and (ii) the other 1%, which is intended for the Special Development fund, shall be kept in trust. (Emphasis supplied)

On March 20, 2007, Republic Act No. 9400[98] was approved. It amended certain provisions of Republic Act No. 7227, including the insertion of a new Section 15-A, thus:

> SECTION 3. A new Section 15-A is hereby inserted, amending Republic Act No. 7227, as amended, to read as follows:
>
> SECTION 15-A. *Poro Point Freeport Zone (PPFZ).* — The two hundred thirty-six and a half-hectare (236.5 has.) secured area in the Poro Point Special Economic and Freeport Zone created under Proclamation No. 216, series of 1993, shall be operated and managed as a freeport and separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the PPFZ. The PPFZ shall

---

[96] Approved by the SBMA Board on November 3, 1992. Published in The Philippine Star on May 28, 1995.

[97] *Rollo*, pp. 153-154.

[98] Published in The Manila Times on April 4, 2007.

also provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the PPFZ to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the PPFZ. *In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the PPFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.*

The governing body of the PPFZ shall have no regulatory authority over public utilities, which authority pertains to the regulatory agencies created by law for the purpose, such as the Energy Regulatory Commission created under Republic Act No. 9136 and the National Telecommunications Commission created under Republic Act No. 7925. (Emphasis supplied)

Subsequently, Department of Finance Order No. 03-08 was issued on February 13, 2008 to implement the provisions of Republic Act No. 9400. Its Section 6 provides the procedure for payment and remittance of the 5% income tax:

SECTION 6. *Payment and Remittance of the 5% Tax on Gross Income Earned —*

A. The 5% Tax on Gross Income Earned shall be paid and remitted by Ecozone Enterprises and Freeport Enterprises as follows:

. . . .

2. For Ecozone Enterprises in the MSEZ, JHSEZ and Freeport Enterprises in CFZ and PPFZ that are registered with CDC and PPMC, respectively:

a. 3% to the National Government;

b. 2% to the local government units (LGUs) through the

Treasurer's Office of the Municipality or City where the Ecozone Enterprise or Freeport Enterprise is located.

However, as the Court of Tax Appeals correctly ruled, this case involves deficiency income tax for taxable year 2006. Department of Finance Order No. 03-08, then, is not applicable, as it was only issued on February 13, 2008, and took effect 15 days after its publication in two newspapers of general circulation.[99]

Thus, petitioner is liable to pay 5% of its gross income to the national government, subject to the condition provided in the Implementing Rules and Regulations of Republic Act No. 7227.

Likewise, the Court of Tax Appeals correctly rejected petitioner's argument that its payment of the 25% license fee is already inclusive of the 5% income tax. It stated:

> The 25% license fee/gross gaming revenue paid by petitioner is different and distinct form the income tax to which petitioner is being assessed. The 25% gross gaming revenue is being paid by virtue of the License entered into by petitioner with PAGCOR. It is based on the aggregate gross gaming revenue of the Fiesta Casino. On the other hand, 5% income tax is based on the total gross revenues originating from the Fiesta Casino.[100] (Citations omitted)

In consideration of the authority granted by PAGCOR to petitioner to establish and operate a casino at the Poro Point, petitioner agreed to pay a license fee to PAGCOR based on its gross revenues or earnings from casino operations. Section 9 of the License provides:

> 9. LICENSE FEE. As an essential condition for the License issued by PAGCOR to THUNDERBIRD PILIPINAS to establish and operate a casino at the PPSEFZ, THUNDERBIRD PILIPINAS must remit to PAGCOR starting from the date the casino commences operations, the following:

---

[99] *Rollo*,pp. 153-154.

[100] Id. at 136.

> Twenty five percent (25%) of the monthly aggregate gross gaming revenue of the FIESTA CASINO excluding junket/ chipwashing operations plus 25% of the monthly gross gaming revenue generated from third-party chipwashing and/or junket operations;
>
> - or -
>
> a Monthly Minimum License Fee of UNITED STATES DOLLARS: SEVENTY FIVE THOUSAND (US$75,000.0) for the first six (6) months period of operation, whichever is higher. The Monthly Minimum License Fee shall be increased to UNITED STATES DOLLARS: ONE HUNDRED TWENTY FIVE THOUSAND (US$125,000.00) for the next six (6) month period.[101]

The 25% license fee is clearly distinct from the 5% income tax being collected by the Bureau of Internal Revenue. As clearly stated in the License, 25% of the gross gaming revenue is being paid by virtue of the License to establish and operate a casino at the Poro Point Special Economic and Freeport Zone. Nothing in the License's terms would show that such amount includes 5% income tax from petitioner's gaming operations. Besides, under the General Provisions of the License, Section 13 (f) states:

> f. THUNDERBIRD PILIPINAS shall hold PAGCOR absolutely free and harmless from any claim, damage or liability, including tax liabilities, which may arise from its business operations, including the operation of the casino, or any agreement or transaction that THUNDERBIRD PILIPINAS may have with the National Government or any entity thereof, and with any third party.[102]

IV

Petitioner further submits that it is not liable to pay deficiency expanded withholding taxes on rental payments in the total amount of ₱19,484,697.00 (instead of the ₱14,201,733.00 found by the Court of Tax Appeals) paid to the Poro Point Management

---

[101] Id. at 205.

[102] Id. at 209.

Corporation and the Bases Conversion and Development Authority. It further contends that it had sufficiently proven: (1) the amount of professional fees paid to Fortun Narvasa & Salazar Law Office and Punongbayan & Araullo;[103] and (2) that the management fees paid to Thunderbird Resorts, Inc., a non-resident foreign corporation, were in consideration for services rendered outside the Philippines, and thus, not subject to expanded withholding tax.[104]

These assertions raise questions of facts that will entail an evaluation of evidence, which are beyond the scope of a judicial review under Rule 45 of the Rules of Court. Settled is the rule that the factual findings of the Court of Tax Appeals are binding on this Court[105] and can only be disturbed on appeal if not supported by substantial evidence.[106]

Petitioner argued before the Court of Tax Appeals First Division that the "Deferred Rent Expense" of ₱14,201,733.00 was recorded as expense in its books of accounts purely for compliance with the Philippine Accounting Standards, and was never claimed as deduction from its gross income for taxable year 2006. The Court of Tax Appeals agreed with petitioner's assertion, saying:

> Section 2.57.4 of RR No. 2-98, as amended, prescribes the time of withholding of the subject EWT as follows:
>
> x x x x
>
> Accordingly, petitioner is required to withhold EWT on its rental when it is either paid, becomes payable or was accrued or claimed as expense for income tax purposes, whichever comes first.

---

[103] *Id.* at 90.

[104] *Id.* at 92-93.

[105] *Far East Bank and Trust Co. v. CIR*, 522 Phil. 434 (2006) [Per J. Tinga, Third Division].

[106] *Po v. Court of Tax Appeals*, 247 Phil. 487 (1988) [Per J. Sarmiento, Second Division];and *Chu Hoi Horn v. Court of Tax Appeals*, 134 Phil. 756 (1968) [Per J. Fernando, En Banc].

The Deferred Rent Expense of P14,201,733.00 was not yet paid or payable in 2006 but was reported in petitioner's audited financial statements for financial statement purposes to comply with PAS No. 17. Moreover, it appears that petitioner did not accrue or claimed the amount of P14,201,733.00 as deductible expense for income tax purposes. Thus, pursuant to Section 2.57.4 of RR No. 2-98, petitioner is not mandated to withhold 5% EWT on the Deferred Rent of P14,201,733.00. Consequently, said amount of P14,201,733.00 should be deducted from the total tax base of P23,622,249.00 reducing the basic deficiency EWT on rent to P424,315.57, computed as follows:

Rent reflected as part of:	
Direct cost	P1,606,845.00
Gen & Admin Expenses	18,012,117.00
Other Expenses	4,003,287.00
Total Rentals	P23,622,249.00
Less: Deferred rent expense	14,201,733.00
Total Rent subject to EWT	P 9,420,516.00
Tax Rate	5%
Basic Deficiency EWT	P 471,025.80
Less: Tax Paid per Return	46,710.23
Adjusted Basic Deficiency EWT	**P424,315.57**[107]

The P19,484,697.00 amount of rental fees asserted by petitioner would require us to sift through all the evidence presented, a task that was for the lower courts to undertake, not this Court in a Rule 45 review. This Court's review power is generally limited to "cases in which only an error or question of law is involved."[108] This Court cannot depart from this limitation if a party fails to invoke a recognized exception.[109]

---

[107] *Rollo*, pp. 140-141.

[108] CONST., art. VIII, sec. 5 (2) (e). The enumeration under Article VIII, Section 5 (1) and (2) of the Constitution generally involves a question of law, except for criminal cases where the penalty imposed is *reclusion perpetua* or higher.

[109] *Philippine Airlines, Inc. v. CIR*, 823 Phil. 1043 (2018) [Per J. Leonen, Third Division].

On professional fees paid to Fortun Narvasa & Salazar Law Office, the Court of Tax Appeals held that the "Transaction Reprint Journal" and "Manual Payments Reprint Journal" submitted by petitioner were insufficient to prove actual payment of P216,223.38. Petitioner, it ruled, should have presented billing statements, invoices, or official receipts issued by the law firm.[110]

As to professional fees accrued and/or paid to Punongbayan & Araullo, the Court of Tax Appeals found that Bill No. 128026 issued by the firm to petitioner shows an audit fee of P400,000.00 for the audit of petitioner's 2006 financial statements and a monthly retainer fee of P15,000.00 for October, November, and December 2006. Thus, the Court of Tax Appeals held that audit fees due to Punongbayan & Araullo for the year 2006 amounted to P445,000.00.[111]

As to the management fees paid to Thunderbird Resorts, Inc., the Court of Tax Appeals was unconvinced that the services rendered by Thunderbird Resorts, Inc. were indeed performed outside the Philippines. While its office is not in the Philippines, the Court of Tax Appeals pointed out, its services can actually be performed here in the Philippines, considering that the subject of the services, which is the casino, is located in the country. The Court of Tax Appeals held that petitioner failed to prove that services were performed outside the Philippines.[112]

A taxpayer has the burden of proving entitlement to a claimed deduction or exemption.[113] The pieces of evidence presented by petitioner have been extensively and judiciously examined by the Court of Tax Appeals, both in Division and *En Banc*.

---

[110] *Rollo*, p. 143.

[111] Id.

[112] Id. at 145-146.

[113] *CIR v. Isabela Cultural Corp.*, 544 Phil. 488 (2007) [Per J. Ynares-Santiago, Third Division]; *CIR v. General Foods (Phils.), Inc.*, 449 Phil. 576 (2003) [Per J. Corona, Third Division]; *Cyanamid Philippines, Inc. v. Court of Appeals*, 379 Phil. 689 (2000) [Per J. Quisumbing, Second Division]; and *Paper Industries Corp. v. Court of Appeals*, 321 Phil. 1 (1995) [Per J. Feliciano, En Banc].

We affirm the Court of Tax Appeals in ruling that petitioner's entitlement to the claimed deduction or exemption was not adequately shown.

This Court accords the highest respect to the Court of Tax Appeals' factual findings. We recognize its developed expertise on the subject, being the court solely dedicated to considering tax issues, unless there is a showing of abuse in the exercise of authority.[114] We find no compelling reason to overturn its factual findings on the amounts of deficiency expanded withholding tax assessments.

V

Finally, petitioner assails the imposition of a 25% surcharge, contending that the deficiency income and expanded withholding tax assessments have not yet become final.[115] It adds that the timely filing of its protest necessarily delayed its obligation to pay the tax assessments until the final resolution of its case.[116]

Respondent counters that Section 248 (A) (3) of the 1997 National Internal Revenue Code does not require the assessment to become final and collectible before a surcharge can be imposed. What is only required is that the taxpayer failed to pay the deficiency tax within the time prescribed for its payment, as provided in the notice of assessment.

This Court finds the imposition of the 25% surcharge to be proper.

Section 248 (A) (3) of the 1997 National Internal Revenue Code, as amended, provides:

SECTION 248. *Civil Penalties*.—

---

[114] *CIR v. Mirant (Phils.) Operations, Corp.*, 667 Phil. 208, 222 (2011) [Per J. Mendoza, Second Division] citing *Toshiba Information Equipment (Phils.), Inc. v. CIR*, 628 Phil. 430 (2010) [Per J. Leonardo-de Castro, First Division].

[115] *Rollo*, p. 99.

[116] Id. at 100.

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

. . . . . .

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment[.]

A fundamental rule of statutory construction is that "where the terms of the statute are clear and unambiguous, no interpretation is called for, and the law is applied as written, for application is the first duty of courts, and interpretation [arises] only where literal application is impossible or inadequate."[117]

Section 248 (A) (3) makes no distinctions nor establish exceptions. It directs the collection of the surcharge at the rate of 25% on the amount due and unpaid after the date prescribed in the assessment notice. The provision, therefore, is mandatory in case of delinquency.[118]

In one case involving a substantially similar provision on surcharges and interest in the old Tax Code, this Court found that the Court of Tax Appeals erred in reckoning the date for the payment of the deficiency tax "within 30 days from the finality of the decision." The Court of Tax Appeals' disposition, held this Court, "ha[d] the effect of fixing a new date for the payment of surcharges and interests[.]"[119]

This Court held that the law is clear in requiring the payment of the surcharge in case of nonpayment within 30 days after

---

[117] *CIR v. Limpan Investment Corp.*, 145 Phil. 191, 194 (1970) [Per J. Castro, En Banc].

[118] *Bank of the Philippine Islands v. CIR*, 528 Phil. 993 (2006) [Per J. Chico-Nazario, First Division]; *CIR v. Liman Investment Corp.*, 145 Phil. 191, 194 (1970) [Per J. Castro, En Banc]; and *CIR v. Royal Interocean Lines*, 145 Phil. 10 (1970) [Per C.J. Concepcion, En Banc].

[119] *CIR v. Limpan Investment Corp.*, 145 Phil. 191, 193 (1970) [Per J. Castro, En Banc].

notice and demand. The surcharge and interest "are invariably considered as 'part of the tax,' so that the rule governing payment of taxes on the dates fixed by law would apply, and would leave no room for discretion on the part of revenue officials, or the Court of Tax Appeals[.]"[120] It explained the purpose of imposing surcharge and interest, thus:

> The intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature. They are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the dates he should have paid them to the State.[121] (Citation omitted)

In *Philippine Refining Company v. Court of Appeals*,[122] the taxpayer assailed the imposition of the 25% surcharge and the 20% delinquency interest on the ground that "the assessment of the Commissioner was modified by the [Court of Tax Appeals] and the decision of said court has not yet become final and executory."[123] This Court, however, upheld the imposition of the 25% surcharge and 20% interest, since the taxpayer defaulted in paying the deficiency tax within the period prescribed in the Commissioner's demand letter.[124] This Court further explained:

> *The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. The reduced amount of P237,381.25 is but a part of the original assessment of P1,892.584.00.*
>
> Our attention has also been called to two of our previous rulings and these we set out here for the benefit of petitioner and whosoever may be minded to take the same stance it has adopted in this case.

---

[120] Id. at 194.

[121] Id.

[122] 326 Phil. 680 (1996) [Per J. Regalado, Second Division].

[123] Id. at 690.

[124] Id. at 691.

Tax laws imposing penalties for delinquencies, so we have long held, are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.

We have likewise explained that *it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government*. Unquestionably, petitioner chose to turn a deaf ear to these injunctions.[125] (Emphasis supplied, citations omitted)

Petitioner contends that Section 5.4 of Revenue Regulations No. 12-99[126] provides that "as a rule, no surcharge is imposed on deficiency tax." Petitioner, however, left out the rest of the provision, which states that "if the amount due . . . is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed." Section 5.4 of Revenue Regulations No. 12-99 provides:

SECTION 5. *Mode of Procedures in Computing for the Tax and/or Applicable Surcharge*.— Shown hereunder are illustrative cases for the computation and assessment of the tax, inclusive of surcharge (if applicable) and interest:

. . . .

5.4 *Penalty or penalties for deficiency tax. — As a rule, no surcharge is imposed on deficiency tax and on the basic tax. However, if the amount due inclusive of penalties is not paid on or before the due date stated on the demand letter, the corresponding surcharge shall be imposed.* (Emphasis supplied)

---

[125] Id. at 691-692.

[126] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1996.

It is clear that there is no 25% surcharge imposed in computing the deficiency tax assessment if paid on or before the date specified in the assessment notice. However, if the deficiency tax is not paid within the required period of time, the surcharge becomes automatically due.[127]

We are not unmindful of several cases[128] where this Court deleted the imposition of surcharges and interests because of the taxpayer's good faith and the Bureau of Internal Revenue's previous erroneous interpretations of the law. In those cases, the taxpayers relied on a specific ruling issued by the Bureau of Internal Revenue to the effect that they were exempt from the payment of the assessed deficiency tax.

Those facts, however, are not present here. Thus, the surcharge imposition, as mandated by the law, should be upheld.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed January 29, 2014 Decision of the Court of Tax Appeals *En Banc* is **AFFIRMED**.

SO ORDERED.

Hernando, Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on wellness leave.

---

[127] *CIR v. Air India*, 241 Phil. 689 (1988) [Per J. Gancayco, First Division].

[128] *CIR v. St. Luke's Medical Center, Inc.*, 695 Phil. 867 (2012) [Per J. Carpio, Second Division]; *Michel J. Lhuillier Pawnshop, Inc. v. CIR*, 533 Phil. 101 (2006) [Per J. Ynares-Santiago, First Division]; *Connell Bros. Co. (Phil.) v. CIR*, 119 Phil. 40 (1963) [Per J. Makalintal, En Banc]; *Tuason, Jr. v. Lingad*, 157 Phil. 159 (1974) [Per J. Castro, First Division]; and *CIR v. Republic Cement Corp.*, 209 Phil. 31 (1983) [Per J. Plana, En Banc].

THIRD DIVISION

[G.R. No. 216425. November 11, 2020]

ANACLETO BALLAHO ALANIS III, *Petitioner, v.* **COURT OF APPEALS, Cagayan de Oro City, and HON. GREGORIO V. DE LA PEÑA III, Presiding Judge, Br. 12, Regional Trial Court of Zamboanga City,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE ON REGLEMENTARY PERIODS FOR APPEALING DECISIONS; THIS RULE CANNOT BE RELAXED EXCEPT IN THE MOST MERITORIOUS CASES.— It is not disputed that the Record on Appeal was filed out of time. The Court of Appeals could have relaxed the rules for perfecting an appeal, but was not required, by law, to review it.

The Court of Appeals found no reason to warrant any relaxation of the rules, after appreciating the following circumstances: (1) petitioner did not adduce evidence to prove the alleged shooting of his former counsel; (2) petitioner was represented by counsel belonging to a law office which had more than one associate; and (3) petitioner was a law graduate and should have been more vigilant.

This Court cannot sidestep the rule on reglementary periods for appealing decisions, except in the most meritorious cases.

2. ID.; ID.; ID.; PARTIES ARE ORDINARILY BOUND BY THE NEGLIGENCE OF THEIR COUNSELS IN FAILING TO TIMELY FILE AN APPEAL, BUT THE COURT MAY TREAT THE PETITION WITH LENIENCY TO SERVE SUBSTANTIAL JUSTICE.— Petitioner claims that the circumstances surrounding the failure to file the appeal are bereft of carelessness or inattention on the part of counsel, and thus, constitute excusable negligence.

This is unconvincing. In *Sublay v. National Labor Relations Commission,* the petitioner filed an appeal out of time because the counsel on record did not inform her or her other counsel

that a decision had been rendered in her case. This Court affirmed the denial of her appeal for having been filed out of time, . . .

This Court noted in *Sublay* that the petitioner was represented by more than one lawyer. The decision she wished to appeal had been duly served on one of her lawyers on record, who failed to inform the more active counsel. This Court ruled that the petitioner was bound by the negligence of her counsel:

. . .

Here, petitioner failed to respond to the assertion that Atty. Dialo's law office, Dialo Darunday & Associates Law Office, is a law firm with more than one lawyer, as well as legal staff, who must have been aware that Atty. Dialo was not reporting to office or receiving his mail sent there. Moreover, Atty. Dialo stopped reporting to office on May 2, 2008, whereas the law firm received the June 2, 2008 Order more than a month later, on June 12, 2008. Without any response to this point, this Court cannot automatically excuse the law office and assume that it could not adjust to Atty. Dialo's absence.

The law firm was certainly negligent in how it dealt with the Order. Given the other circumstances of this case, petitioner would ordinarily be bound by this negligence. . . .

Nonetheless, in the exercise of its equity jurisdiction, this Court may choose to apply procedural rules more liberally to promote substantial justice. Thus, we delve into the substantial issues raised by petitioner.

3. POLITICAL LAW; CONSTITUTIONAL LAW; CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN; WOMEN IN DEVELOPMENT AND NATION BUILDING ACT (R.A. NO. 7192); FUNDAMENTAL EQUALITY BETWEEN MEN AND WOMEN; THE STATE HAS THE DUTY TO ENSURE GENDER EQUALITY AND DISMANTLE THE CULTURE THAT SUPPORTS PATRIARCHY.— The fundamental equality of women and men before the law shall be ensured by the State. This is guaranteed by no less than the Constitution, a statute, and an international convention to which the Philippines is a party.

> In 1980, the Philippines became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, and is thus now part of the Philippine legal system. . . .
>
> . . . Thus, the State has the duty to actively modify what is in its power to modify, to ensure that women are not discriminated.
>
> Accordingly, Article II, Section 14 of the 1987 Constitution reiterated the State's commitment to ensure gender equality:
>
> . . .
>
> In keeping with the Convention, Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality. This provision is even more noticeably proactive than the more widely-invoked equal protection and due process clauses under the Bill of Rights. . . .
>
> Article II, Section 14 implies the State's positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it.
>
> With the Philippines as a state party to the Convention, the emerging customary norm, and not least of all in accordance with its constitutional duty, Congress enacted Republic Act No. 7192, or the Women in Development and Nation Building Act. Reiterating Article II, Section 14, the law lays down the steps the government would take to attain this policy[.]

4. ID.; ID.; ID.; ID.; ID.; STATUTORY CONSTRUCTION; COURTS MUST INTERPRET LAWS IN SUCH A WAY AS TO ENSURE FUNDAMENTAL EQUALITY BETWEEN MEN AND WOMEN.— Courts, like all other government departments and agencies, must ensure the fundamental equality of women and men before the law. Accordingly, where the text of a law allows for an interpretation that treats women and men more equally, that is the correct interpretation.

5. CIVIL LAW; PERSONS AND FAMILY RELATIONS; USE OF SURNAME BY A LEGITIMATE CHILD; STATUTORY CONSTRUCTION; INTERPRETATION OF THE WORD "PRINCIPALLY" IN ARTICLE 364 OF THE CIVIL CODE; ALLOWING LEGITIMATE CHILDREN TO USE THEIR MOTHERS' SURNAMES IS IN ACCORD WITH THE STATE POLICY OF ENSURING FUNDAMENTAL

EQUALITY BETWEEN MEN AND WOMEN BEFORE THE LAW.— [T]he Regional Trial Court gravely erred when it held that legitimate children cannot use their mothers' surnames. . . .

. . .

The Regional Trial Court's application of Article 364 of the Civil Code is incorrect. Indeed, the provision states that legitimate children shall "principally" use the surname of the father, but "principally" does not mean "exclusively." This gives ample room to incorporate into Article 364 the State policy of ensuring the fundamental equality of women and men before the law, and no discernible reason to ignore it. This Court has explicitly recognized such interpretation in *Alfon v. Republic*:

. . .

Given these irrefutable premises, the Regional Trial Court patently erred in denying petitioner's prayer to use his mother's surname, based solely on the word "principally" in Article 364 of the Civil Code.

6. ID.; ID.; ID.; TO ALLOW LEGITIMATE CHILDREN TO USE ONLY THEIR FATHERS' SURNAMES IS TO ENCODE PATRIARCHY INTO OUR CULTURE.— Patriarchy becomes encoded in our culture when it is normalized. The more it pervades our culture, the more its chances to infect this and future generations.

The trial court's reasoning further encoded patriarchy into our system. If a surname is significant for identifying a person's ancestry, interpreting the laws to mean that a marital child's surname must identify only the paternal line renders the mother and her family invisible. This, in turn, entrenches the patriarchy and with it, antiquated gender roles: the father, as dominant, in public; and the mother, as a supporter, in private.

7. REMEDIAL LAW; SPECIAL PROCEEDINGS; CHANGE OF NAME; CHANGE OF NAME IS ALLOWED TO AVOID CONFUSION. — [T]his Court sees fit to grant the requested change to avoid confusion.

The Regional Trial Court itself also recognized the confusion that may arise here. Despite this, it did not delve into the issue of changing "Anacleto" to "Abdulhamid," but instead concluded

that granting the petition would create even more confusion, because it "could trigger much deeper inquiries regarding [his] parentage and/or paternity[.]"

This Court fails to see how the change of name would create more confusion. Whether people inquire deeper into petitioner's parentage or paternity because of a name is inconsequential here, and seems to be more a matter of intrigue and gossip than an issue for courts to consider. Regardless of which name petitioner uses, his father's identity still appears in his birth certificate, where it will always be written, and which can be referred to in cases where paternity is relevant.

APPEARANCES OF COUNSEL

Giovanni L. Luistro for petitioner.

D E C I S I O N

LEONEN, *J.*:

Reading Article 364 of the Civil Code together with the State's declared policy to ensure the fundamental equality of women and men before the law,[1] a legitimate child is entitled to use the surname of either parent as a last name.

This Court resolves the Petition for Certiorari[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals, which

---

[1] Section 2, Republic Act No. 7192 (1992). Women in Development and Nation Building Act.

[2] *Rollo*, pp. 11-20.

[3] Id. at 22-30. The May 26, 2014 Decision in CA-G.R. SP No. 02619-MIN was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Oscar V. Badelles and Edward B. Contreras of the Special Twenty-First Division of the Court of Appeals, Cagayan de Oro City.

[4] Id. at 32-33. The December 15, 2014 Resolution in CA-G.R. SP No. 02619-MIN was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Oscar V. Badelles and Edward B. Contreras of the

affirmed the Regional Trial Court Orders[5] denying Anacleto Ballaho Alanis III's appeal to change his name to Abdulhamid Ballaho.

Petitioner filed a Petition before the Regional Trial Court of Zamboanga City, Branch 12, to change his name.[6] He alleged that he was born to Mario Alanis y Cimafranca and Jarmila Imelda Ballaho y Al-Raschid,[7] and that the name on his birth certificate was "Anacleto Ballaho Alanis III."[8] However, he wished to remove his father's surname "Alanis III," and instead use his mother's maiden name "Ballaho," as it was what he has been using since childhood and indicated in his school records.[9] He likewise wished to change his first name from "Anacleto" to "Abdulhamid" for the same reasons.[10]

During trial, petitioner testified that his parents separated when he was five years old. His father was based in Maguindanao while his mother was based in Basilan. His mother testified that she single-handedly raised him and his siblings.[11]

As summarized by the Regional Trial Court, petitioner presented the following in evidence to support his claim that the requested change would avoid confusion:

. . . a.) petitioner's photograph in what appears to be a page of a yearbook; b.) another photograph of the petitioner appearing in the

---

Former Special Twenty-First Division of the Court of Appeals, Cagayan de Oro City.

[5] Id. at 34-41. The April 9, 2008 Order in Special Proceeding No. 5528 was penned by Presiding Judge Gregorio V. Dela Peña III of the Regional Trial Court of Zamboanga City, Branch 12. The Regional Trial Court also issued a June 2, 2008 Order.

[6] Id. at 12.

[7] Id. at 43.

[8] Id. at 35.

[9] Id. at 12.

[10] Id. at 35.

[11] Id. at 36.

editorial staff of ND Beacon where he appears to be the assistant editor-in-chief; c.) the high school diploma of the petitioner certifying that he finished his high school education at Notre Dame of Parang in Parang, Maguindanao; d.) another copy of the editorial of the ND Beacon where petitioner's name appears as one of its editorial staff; e.) another copy of the editorial of ND Beacon where the name of the petitioner appears as the editor-in-chief; f.) a certificate of participation issued to the petitioner by the Department of [E]ducation, Culture and Sports; g.) a CAP College Foundation, Inc., diploma issued in the name of petitioner; h.) another CAP College Foundation, Inc., diploma issued in the name of petitioner; i.) a [W]estern Mindanao State University student identification card in the name of petitioner; j.) a non-professional driver[']s license issued in the name of petitioner; k.) the Community Tax Certificate of petitioner[.][12]

In its April 9, 2008 Order,[13] the Regional Trial Court denied the Petition, holding that petitioner failed to prove any of the grounds to warrant a change of name.[14] It noted that the mere fact that petitioner has been using a different name and has become known by it is not a valid ground for change of name. It also held that to allow him to drop his last name was to disregard the surname of his natural and legitimate father,[15] in violation of the Family Code and Civil Code, which provide that legitimate children shall principally use their fathers' surnames.[16]

The Regional Trial Court acknowledged that confusion could exist here, but found that granting his petition would create more confusion:

Although it may appear that confusion may indeed arise as to the identity of the petitioner herein who has accordingly used the name Abdulhamid Ballaho in all his records and is known to the community

---

[12] Id.

[13] Id. at 34-41.

[14] Id. at 40.

[15] Id. at 39.

[16] Id.

as such person and not Anacleto Ballaho Alanis III, his registered full name is his Certificate of Live Birth, this Court believes that the very change of name sought by the petitioner in this petition would even create more confusion since if so granted by this Court, such change sought after could trigger much deeper inquiries regarding her parentage and/or paternity, bearing in mind that he is the legitimate eldest child of the spouses Mario Alanis y Cimafranca and Jarmila Imelda Ballaho y Al-Raschid[.][17]

Thus, the trial court concluded that, instead of seeking to change his name in his birth certificate, petitioner should have had the other private and public records corrected to conform to his true and correct name:

> Time and again, this Court has consistently ruled that, in similar circumstances, the proper remedy for the petitioner is to instead cause the proper correction of his private and public records to conform to his true and correct first name and surname, which in this case is Anacleto Ballaho Alanis, III and not to change his said official, true and correct name as appearing in his Certificate of Live Birth simply because either he erroneously and inadvertently or even purposely or deliberately used an incorrect first name and surname in his private and public records.[18]

The dispositive portion of the Order reads:

> WHEREFORE, in view of the foregoing, and finding no legal, proper, justified and reasonable grounds to allow the change of name of the herein petitioner from Anacleto Ballaho Alanis III as appearing in his Certificate of Live Birth to Abdulhamid Ballaho as prayed for by the petitioner in his petition dated February 1, 2007 the above-entitled petition is hereby DENIED and ordered DISMISSED for lack of merit. No cost.
>
> SO ORDERED.[19]

Petitioner moved for reconsideration, but the Regional Trial Court denied this in a June 2, 2008 Order.[20]

---

[17] Id. at 39-40.

[18] Id. at 40.

[19] Id.

[20] Id. at 13.

It appears that on May 2, 2008, a month before the trial court rendered this Order, petitioner's counsel, Atty. Johny Boy Dialo (Atty. Dialo), had figured in a shooting incident and failed to report for work. Thus, petitioner was only able to file a notice of appeal on September 2, 2008 — months after Atty. Dialo's law office had received the Order, beyond the filing period. He invoked his counsel's excusable neglect for a belated appeal, alleging the shooting incident.[21]

Thereafter, with a new counsel, petitioner filed a Record on Appeal and Notice of Appeal on September 3, 2008,[22] reiterating his counsel's excusable negligence.[23] He added that he was set to take the Bar Examinations and had to come home from his review, only to find out after checking with Atty. Dialo's law office that he had lost the case and the appeal period had lapsed.[24] However, the Record and Notice of Appeal were denied in the Regional Trial Court's September 16, 2008 Order for having been filed out of time.[25]

Thus, petitioner filed a Petition for Certiorari[26] before the Court of Appeals, providing the same reason to explain his failure to timely appeal.

In its May 26, 2014 Decision,[27] the Court of Appeals denied the Petition, holding that petitioner failed to show any reason to relax or disregard the technical rules of procedure.[28] It noted that the trial court did not gravely err in denying petitioner's Record on Appeal for having been filed out of time.[29]

---

[21] Id. at 61.

[22] Id. at 63.

[23] Id. at 64.

[24] Id. at 59.

[25] Id. at 63-64.

[26] Id. at 68-75.

[27] Id. at 22-30.

[28] Id. at 26.

[29] Id. at 29.

Petitioner moved for reconsideration, which was also denied in the Court of Appeals' December 15, 2014 Resolution.[30] Thus, he filed this Petition for Certiorari.[31]

Petitioner insists that the serious indisposition of his counsel after being shot and receiving death threats is excusable negligence for a belated appeal, it not being attended by any carelessness or inattention.[32] Delving on the substantive issue, petitioner maintains that he has the right to use his mother's surname despite his legitimate status, as recognized in *Alfon v. Republic*.[33]

In its Comment,[34] the Office of the Solicitor General argued that this Petition should be dismissed outright for being the wrong remedy, and that the proper course was to file a petition for review on certiorari.[35] Further, it argues that the Court of Appeals did not gravely abuse its discretion in upholding the trial court's ruling.[36] It points out that since Atty. Dialo's law office has more than one lawyer, and it had admittedly received the Order,[37] the belated appeal was unjustified. Further, petitioner was already a law graduate when he filed the first Petition, and was expected to be more vigilant of his case's progress.[38] Thus, the Office of the Solicitor General finds no "exceptionally meritorious" reason to warrant a liberal interpretation of technical rules. In any case, petitioner's reason is not among the grounds to warrant a change in name.[39]

---

[30] Id. at 14.

[31] Id. at 11. Filed under Rule 65 of the Rules of Court.

[32] Id. at 15-16.

[33] Id. at 17 citing 186 Phil. 600 (1980) [Per J. Abad Santos, Second Division].

[34] Id. at 99-117.

[35] Id. at 102-105.

[36] Id. at 105-109.

[37] Id. at 107.

[38] Id. at 108.

[39] Id. at 109.

In his Reply,[40] petitioner failed to address the argument that a petition for certiorari is the wrong remedy to assail the Court of Appeals' dismissal of his Petition for Certiorari. He only reiterated the Court of Appeals should have discarded technicalities, because jurisprudence on Article 364 of the Civil Code is settled in his favor.[41]

After this Court had given due course to the Petition, the parties filed their respective memoranda.[42]

The issues for this Court's resolution are:

First, whether or not the Petition should be dismissed for petitioner's failure to show grave abuse of discretion on the part of the Court of Appeals;

Second, whether or not legitimate children have the right to use their mothers' surnames as their surnames; and

Finally, whether or not petitioner has established a recognized ground for changing his name.

This Court grants the Petition.

I

The Petition was filed under Rule 65 of the Rules of Court, but petitioner did not even attempt to show any grave abuse of discretion on the part of the Court of Appeals. On this ground alone, the Petition may be dismissed.

It is not disputed that the Record on Appeal was filed out of time. The Court of Appeals could have relaxed the rules for perfecting an appeal, but was not required, by law, to review it.

The Court of Appeals found no reason to warrant any relaxation of the rules, after appreciating the following circumstances: (1) petitioner did not adduce evidence to prove

---

[40] Id. at 119-121.

[41] Id. at 120.

[42] Id. at 133-141 and 143-166.

the alleged shooting of his former counsel;[43] (2) petitioner was represented by counsel belonging to a law office which had more than one associate;[44] and (3) petitioner was a law graduate and should have been more vigilant.[45]

This Court cannot sidestep the rule on reglementary periods for appealing decisions, except in the most meritorious cases.[46]

Petitioner claims that the circumstances surrounding the failure to file the appeal are bereft of carelessness or inattention on the part of counsel, and thus, constitute excusable negligence.

This is unconvincing. In *Sublay v. National Labor Relations Commission*,[47] the petitioner filed an appeal out of time because the counsel on record did not inform her or her other counsel that a decision had been rendered in her case. This Court affirmed the denial of her appeal for having been filed out of time, explaining that:

> The unbroken stream of judicial *dicta* is that clients are bound by the action of their counsel in the conduct of their case. Otherwise, if the lawyer's mistake or negligence was admitted as a reason for the opening of a case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned.[48] (Citation omitted)

This Court noted in *Sublay* that the petitioner was represented by more than one lawyer. The decision she wished to appeal had been duly served on one of her lawyers on record, who failed to inform the more active counsel. This Court ruled that the petitioner was bound by the negligence of her counsel:

---

[43] Id. at 27.

[44] Id. at 28.

[45] Id. at 27.

[46] *Sublay v. National Labor Relations Commission*, 381 Phil. 198, 204 (2000) [Per J. Bellosillo, Second Division].

[47] 381 Phil. 198 (2000) [Per J. Bellosillo, Second Division].

[48] Id. at 205.

> Lastly, petitioner's claim for judicial relief in view of her counsel's alleged negligence is incongruous, to say the least, considering that she was represented by more than one (1) lawyer. Although working merely as a collaborating counsel who entered his appearance for petitioner as early as May 1996, *i.e.*, more or less six (6) months before the termination of the proceedings *a quo*, Atty. Alikpala had the bounden duty to monitor the progress of the case. A lawyer has the responsibility of monitoring and keeping track of the period of time left to file an appeal. He cannot rely on the courts to appraise him of the developments in his case and warn him against any possible procedural blunder. Knowing that the lead counsel was no longer participating actively in the trial of the case several months before its resolution, Atty. Alikpala who alone was left to defend petitioner should have put himself on guard and thus anticipated the release of the Labor Arbiter's decision. Petitioner's lead counsel might have been negligent but she was never really deprived of proper representation. This fact alone militates against the grant of this petition.[49]

Here, petitioner failed to respond to the assertion that Atty. Dialo's law office, Dialo Darunday & Associates Law Office, is a law firm with more than one lawyer, as well as legal staff, who must have been aware that Atty. Dialo was not reporting to office or receiving his mail sent there. Moreover, Atty. Dialo stopped reporting to office on May 2, 2008, whereas the law firm received the June 2, 2008 Order more than a month later, on June 12, 2008. Without any response to this point, this Court cannot automatically excuse the law office and assume that it could not adjust to Atty. Dialo's absence.

The law firm was certainly negligent in how it dealt with the Order. Given the other circumstances of this case, petitioner would ordinarily be bound by this negligence. Consequently, petitioner had the burden to sufficiently establish, by alleging and arguing, that this case is so meritorious that it warrants the relaxation of the procedural rules. This, petitioner did not bother to do.

---

[49] Id. at 206.

Nonetheless, in the exercise of its equity jurisdiction,[50] this Court may choose to apply procedural rules more liberally to promote substantial justice. Thus, we delve into the substantial issues raised by petitioner.

II

The fundamental equality of women and men before the law shall be ensured by the State. This is guaranteed by no less than the Constitution,[51] a statute,[52] and an international convention to which the Philippines is a party.

In 1980, the Philippines became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, and is thus now part of the Philippine legal system. As a state party to the Convention, the Philippines bound itself to the following:

Article 2

. . . .

(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

. . . .

Article 5

. . . .

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea

---

[50] See *Durban Apartments Corp. v. Catacutan*, 514 Phil. 187 (2005) [Per J. Ynares-Santiago, First Division].

[51] CONST., art. I, sec. 14 states:

SECTION 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

[52] Republic Act No. 7192 (1992). Women in Development and Nation Building Act.

> of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.][53]

Non-discrimination against women is also an emerging customary norm. Thus, the State has the duty to actively modify what is in its power to modify, to ensure that women are not discriminated.

Accordingly, Article II, Section 14 of the 1987 Constitution reiterated the State's commitment to ensure gender equality:

> SECTION 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

In keeping with the Convention, Article II, Section 14 of the Constitution requires that the State be active in ensuring gender equality. This provision is even more noticeably proactive than the more widely-invoked equal protection and due process clauses under the Bill of Rights. In *Racho v. Tanaka*,[54] this Court observed:

> This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue "affirmative ways and means to battle the patriarchy — that complex of political, cultural, and economic factors that ensure women's disempowerment."[55] (Citation omitted)

Article II, Section 14 implies the State's positive duty to actively dismantle the existing patriarchy by addressing the culture that supports it.

---

[53] Convention on the Elimination of All Forms of Discrimination against Women (1979), secs. 2 and 5.

[54] G.R. No. 199515, June 25, 2018, 868 SCRA 25 [Per J. Leonen, Third Division].

[55] Id. at 44.

With the Philippines as a state party to the Convention, the emerging customary norm, and not least of all in accordance with its constitutional duty, Congress enacted Republic Act No. 7192, or the Women in Development and Nation Building Act. Reiterating Article II, Section 14, the law lays down the steps the government would take to attain this policy:

> SECTION 2. *Declaration of Policy*. — The State recognizes the role of women in nation building and shall ensure the fundamental equality before the law of women and men. The State shall provide women rights and opportunities equal to that of men.
>
> To attain the foregoing policy:
>
> (1) A substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations shall be set aside and utilized by the agencies concerned to support programs and activities for women;
>
> (2) All government departments shall ensure that women benefit equally and participate directly in the development programs and projects of said department, specifically those funded under official foreign development assistance, to ensure the full participation and involvement of women in the development process; and
>
> (3) All government departments and agencies shall review and revise all their regulations, circulars, issuances and procedures to remove gender bias therein.[56]

Courts, like all other government departments and agencies, must ensure the fundamental equality of women and men before the law. Accordingly, where the text of a law allows for an interpretation that treats women and men more equally, that is the correct interpretation.

Thus, the Regional Trial Court gravely erred when it held that legitimate children cannot use their mothers' surnames. Contrary to the State policy, the trial court treated the surnames of petitioner's mother and father unequally when it said:

---

[56] Republic Act No. 7192 (1992), sec. 2.

In the case at bar, what the petitioner wishes is for this Court to allow him to legally change is [sic] his given and registered first name from Anacleto III to Abdulhamid and to altogether disregard or drop his registered surname, Alanis, the surname of his natural and legitimate father, and for him to use as his family name the maiden surname of his mother Ballaho, which is his registered middle name, which petitioner claims and in fact presented evidence to be the name that he has been using and is known to be in all his records.

In denying the herein petition, this Court brings to the attention of the petitioner that, our laws on the use of surnames state that legitimate and legitimated children shall principally use the surname of the father. The Family Code gives legitimate children the right to bear the surnames of the father and the mother, while illegitimate children shall use the surname of their mother, unless their father recognizes their filiation, in which case they may bear the father's surname. Legitimate children, such as the petitioner in this case, has [sic] the right to bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames, and it is so provided by law that legitimate and legitimated children shall principally use the surname of the father.[57] (Citations omitted)

This treatment by the Regional Trial Court was based on Article 174 of the Family Code, which provides:

ARTICLE 174. Legitimate children shall have the right:

(1) To bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code on Surnames[.]

In turn, Article 364 of the Civil Code provides:

ARTICLE 364. Legitimate and legitimated children shall principally use the surname of the father.

The Regional Trial Court's application of Article 364 of the Civil Code is incorrect. Indeed, the provision states that legitimate children shall "principally" use the surname of the father, but "principally" does not mean "exclusively." This gives

[57] *Rollo*, pp. 39-40.

ample room to incorporate into Article 364 the State policy of ensuring the fundamental equality of women and men before the law, and no discernible reason to ignore it. This Court has explicitly recognized such interpretation in *Alfon v. Republic*:[58]

> The only reason why the lower court denied the petitioner's prayer to change her surname is that as legitimate child of Filomeno Duterte and Estrella Alfon she should principally use the surname of her father invoking Art. 364 of the Civil Code.But the word "principally" as used in the codal-provision is not equivalent to "exclusively" so that there is no legal obstacle if a legitimate or legitimated child should choose to use the surname of its mother to which it is equally entitled. Moreover, this Court in *Haw Liong vs. Republic*, G.R. No. L-21194, April 29, 1966, 16 SCRA 677, 679, said:
>
> > "The following may be considered, among others, as proper or reasonable causes that may warrant the grant of a petitioner for change of name; (1) when the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce; (2) when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated; and (3) when the change is necessary to avoid confusion (Tolentino, Civil Code of the Philippines, 1953 ed., Vol. 1, p. 660)."[59]

Given these irrefutable premises, the Regional Trial Court patently erred in denying petitioner's prayer to use his mother's surname, based solely on the word "principally" in Article 364 of the Civil Code.

III

Having resolved the question of whether a legitimate child is entitled to use their mother's surname as their own, this Court proceeds to the question of changing petitioner's first name from "Anacleto" to "Abdulhamid."

Whether grounds exist to change one's name is a matter generally left to the trial court's discretion.[60] Notably, the Petition

---

[58] 186 Phil. 600 [Per J. Abad Santos, Second Division].

[59] Id. at 603.

[60] *Republic v. Bolante*, 528 Phil. 328 (2006) [Per J. Garcia, Second Division].

is devoid of any legal arguments to persuade this Court that the Regional Trial Court erred in denying him this change. Nonetheless, we revisit the ruling, and petitioner's arguments as stated in his appeal.

The Regional Trial Court correctly cited the instances recognized under jurisprudence as sufficient to warrant a change of name, namely:

> . . . (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence of legitimation or adoption; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage; (e) when the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.[61] (Citation omitted)

As summarized in the Record on Appeal, the petition to change name was filed to avoid confusion:

> Petitioner has been using the name Abdulhamid Ballaho in all his records and transactions. He is also known to and called by his family and friends by such name. He has never used the name Anacleto Ballaho Alanis III even once in his life. To have the petitioner suddenly use the name Anacleto Ballaho Alanis III would cause undue embarrassment to the petitioner since he has never been known by such name. Petitioner has shown not only some proper or compelling reason but also that he will be prejudiced by the use of his true and official name. A mere correction of his private and public records to conform to the name stated in his Certificate of Live Birth would create more confusion because petitioner has been using the name Abdulhamid Ballaho since enrollment in grade school until finishing his law degree. The purpose of the law in allowing change of name as contemplated by the provisions of Rule 103 of the Rules of Court is to give a person an opportunity to improve his personality and to provide his best interest[.] There

---

[61] *Republic v. Hernandez*, 323 Phil. 606, 637-638 (1996) [Per J. Regalado, Second Division].

is therefore ample justification to grant fully his petition, which is not whimsical but on the contrary is based on a solid and reasonable ground, i.e., to avoid confusion[.][62] (Citations omitted)

These arguments are well taken. That confusion could arise is evident. In *Republic v. Bolante*,[63] where the respondent had been known as "Maria Eloisa" her whole life, as evidenced by scholastic records, employment records, and licenses, this Court found it obvious that changing the name written on her birth certificate would avoid confusion:

> The matter of granting or denying petitions for change of name and the corollary issue of what is a proper and reasonable cause therefor rests on the sound discretion of the court. The evidence presented need only be satisfactory to the court; it need not be the best evidence available. What is involved in special proceedings for change of name is, to borrow from *Republic v. Court of Appeals*, . . . *"not a mere matter of allowance or disallowance of the petition, but a judicious evaluation of the sufficiency and propriety of the justifications advanced in support thereof, mindful of the consequent results in the event of its grant and with the sole prerogative for making such determination being lodged in the courts."*
>
> With the view we take of the case, respondent's submission for a change of name is with proper and reasonable reason. As it were, she has, since she started schooling, used the given name and has been known as *Maria Eloisa*, albeit the name *Roselie Eloisa* is written on her birth record. Her scholastic records, as well as records in government offices, including that of her driver's license, professional license as a certified public accountant issued by the Professional Regulation Commission, and the "Quick Count" document of the COMELEC, all attest to her having used practically all her life the name *Maria Eloisa Bringas Bolante*.
>
> The imperatives of avoiding confusion dictate that the instant petition is granted. But beyond practicalities, simple justice dictates that every person shall be allowed to avail himself of any opportunity to improve his social standing, provided he does so without causing prejudice

---

[62] *Rollo*, p. 54.

[63] 528 Phil. 328 (2006) [Per J. Garcia, Second Division].

or injury to the interests of the State or of other people.[64] (Emphasis in the original, citations omitted)

This Court made a similar conclusion in *Chua v. Republic*:[65]

> The same circumstances are attendant in the case at bar. As Eric has established, he is known in his community as "Eric Chua," rather than "Eric Kiat." Moreover, all of his credentials exhibited before the Court, other than his Certificate of Live Birth, bear the name "Eric Chua." Guilty of reiteration, Eric's Certificate of Baptism, Voter Certification, Police Clearance, National Bureau of Investigation Clearance, Passport, and High School Diploma all reflect his surname to be "Chua." Thus, to compel him to use the name "Eric Kiat" at this point would inevitably lead to confusion. It would result in an alteration of all of his official documents, save for his Certificate of Live Birth. His children, too, will correspondingly be compelled to have their records changed. For even their own Certificates of Live Birth state that their father's surname is "Chua." To deny this petition would then have ramifications not only to Eric's identity in his community, but also to that of his children.[66]

Similarly, in this case, this Court sees fit to grant the requested change to avoid confusion.

The Regional Trial Court itself also recognized the confusion that may arise here. Despite this, it did not delve into the issue of changing "Anacleto" to "Abdulhamid," but instead concluded that granting the petition would create even more confusion, because it "could trigger much deeper inquiries regarding [his] parentage and/or paternity[.]"[67]

This Court fails to see how the change of name would create more confusion. Whether people inquire deeper into petitioner's parentage or paternity because of a name is inconsequential here, and seems to be more a matter of intrigue and gossip

---

[64] Id. at 339-340.

[65] 820 Phil. 1257 (2017) [Per J. Velasco, Third Division].

[66] Id. at 1263.

[67] *Rollo*, p. 40.

than an issue for courts to consider. Regardless of which name petitioner uses, his father's identity still appears in his birth certificate, where it will always be written, and which can be referred to in cases where paternity is relevant.

Aside from being unduly restrictive and highly speculative, the trial court's reasoning is also contrary to the spirit and mandate of the Convention, the Constitution, and Republic Act No. 7192, which all require that the State take the appropriate measures to ensure the fundamental equality of women and men before the law.

Patriarchy becomes encoded in our culture when it is normalized. The more it pervades our culture, the more its chances to infect this and future generations.[68]

The trial court's reasoning further encoded patriarchy into our system. If a surname is significant for identifying a person's ancestry, interpreting the laws to mean that a marital child's surname must identify only the paternal line renders the mother and her family invisible. This, in turn, entrenches the patriarchy and with it, antiquated gender roles: the father, as dominant, in public; and the mother, as a supporter, in private.[69]

WHEREFORE, the Petition is **GRANTED**. The May 26, 2014 Decision and December 15, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 02619-MIN, as well as the April 9, 2008 and June 2, 2008 Orders of the Regional Trial Court of Zamboanga City, Branch 12 in Special Proceeding No. 5528, are **REVERSED and SET ASIDE**.

As prayed for in his Petition for Change of Name, petitioner's name is declared to be **ABDULHAMID BALLAHO**. Accordingly, the Civil Registrar of Cebu City is **DIRECTED**

---

[68] J. Leonen, Concurring Opinion in *Re: Untian, Jr.*, A.C. No. 5900 (Resolution), April 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65162> [Per J. A. Reyes, Jr., En Banc].

[69] *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].

to make the corresponding corrections to petitioner's name, from ANACLETO BALLAHO ALANIS III to ABDULHAMID BALLAHO.

SO ORDERED.

Hernando, Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

SECOND DIVISION

[G.R. No. 242696. November 11, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ZALDY BERNARDO *y* ESPIRITU, MONROY FLORES *y* CORPUZ, JESUS TIME *y* CABESA, GILBERT PACPACO *y* DIRECTO, GILBERT RAMIREZ *y* DUNEGO, DANNY CORTEZ *y* DONIETO, ROGELIO ANTONIO *y* ABUJUELA, TOMMY CABESA *y* VILLEGAS, and MILA ANDRES GALAMAY,** *Accused,* **ZALDY BERNARDO *y* ESPIRITU, MONROY FLORES *y* CORPUZ, DANNY CORTEZ *y* DONIETO, and MILA ANDRES GALAMAY,** *Accused-Appellants.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; CRIMINAL LAW; EXTINCTION OF CRIMINAL AND CIVIL LIABILITY; THE SUPERVENING DEATH OF AN ACCUSED WARRANTS THE DISMISSAL OF THE CRIMINAL CASE, AS WELL AS THE CIVIL ACTION IMPLIEDLY INSTITUTED TO RECOVER CIVIL LIABILITY *EX DELICTO*.—** In light of Cortez' supervening death, the Court is constrained to dismiss the instant criminal actions against him inasmuch as he can no longer stand as an accused herein. In the same vein, the civil action impliedly instituted for the recovery of the civil liability *ex delicto* is likewise *ipso facto* dismissed, grounded as it is on the criminal action. . . . As such, the instant criminal cases must be declared closed and terminated as to Cortez in view of his supervening death.

2. **ID.; ID.; ID.; ID.; FOR AN ACCUSED'S CIVIL LIABILITY BASED ON SOURCES OTHER THAN DELICTS, THE VICTIM'S HEIRS MAY FILE SEPARATE CIVIL ACTIONS AGAINST THE ESTATE.—** However, it is well to clarify that Cortez' civil liability, if any, in connection with his acts against the victims, may be based on sources other than delicts; in which case, the victims' heirs may file separate civil actions

against Cortez' estate, as may be warranted by law and procedural rules.

3. ID.; ID.; APPEALS; AN APPEAL IN A CRIMINAL CASE OPENS THE ENTIRE CASE FOR REVIEW.— It is well-settled that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

4. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; KIDNAPPING FOR RANSOM WITH HOMICIDE; ELEMENTS THEREOF; PENALTY AND CIVIL LIABILITY IN CASE AT BAR.— The elements of Kidnapping for Ransom under Article 267 of the RPC, as amended, are as follows:(*a*) intent on the part of the accused to deprive the victim of his/her liberty; (*b*) actual deprivation of the victim of his/her liberty; and (*c*) motive of the accused, which is extorting ransom for the release of the victim. In the special complex crime of Kidnapping for Ransom with Homicide, the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought.

As correctly ruled by the courts *a quo*, the prosecution had established the existence of the aforementioned elements. . . .

. . .

. . . [A]ccused-appellants Zaldy Bernardo *y* Espiritu, Monroy Flores *y* Corpuz, and Mila Andres Galamay are found **GUILTY** beyond reasonable doubt of Kidnapping for Ransom with Homicide, as defined and penalized under Article 267 of the Revised Penal Code, and accordingly, sentenced to each suffer the penalty of *reclusion perpetua* without eligibility for parole and to jointly and severally indemnify the heirs of Dr. Eliezer Andres, Sr. the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱117,455.00 as actual damages, all with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

5. REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; REQUIREMENTS FOR AN EXTRAJUDICIAL CONFESSION TO BE ADMISSIBLE IN EVIDENCE.— [T]he extrajudicial confession executed by Antonio as embodied in his July 6 *Salaysay* relative to the commission of the kidnapping of Dr. Andres, Sr. is merely *corroborative* of the prosecution evidence on this particular charge. To be admissible, a confession must comply with the following requirements: it "must be (*a*) voluntary; (*b*) made with the assistance of a competent and independent counsel; (*c*) express; and (*d*) in writing."

6. ID.; ID.; ID.; A CONFESSION THAT MERELY CORROBORATES INDEPENDENT EVIDENCE AND PROVIDES DETAILS THAT ONLY A PERSON PRIVY TO THE CRIME CAN SUPPLY IS ADMISSIBLE.— In this case, not only was the prosecution able to establish that these requirements had been complied with, it was also able to show that the contents of Antonio's July 6 *Salaysay* merely *corroborated* independent evidence pointing to accused-appellants as the perpetrators of the crime. Indeed, there is sufficient evidence showing the complicity of accused-appellants beyond moral certainty, consisting in the positive identification of **Bernardo** and **Galamay** by Dr. Andres, Jr., as well as the *in flagrante* arrest of **Flores**. Furthermore, Antonio's July 6 *Salaysay* was executed *after* his co-conspirators had been duly identified and arrested. If at all, aside from the corroboration it lent to the prosecution evidence, it additionally provided details that only persons privy to the kidnapping can supply, *i.e.*, the place where Dr. Andres, Sr. was detained and the fact that his vehicle had been burned and abandoned in Norzagaray, Bulacan.

7. ID.; ID.; ID.; PRINCIPLE OF *RES INTER ALIOS ACTA ALTERI NOCERE NON DEBET*; AN EXTRAJUDICIAL CONFESSION BINDS ONLY THE CONFESSANT IN THE ABSENCE OF INDEPENDENT EVIDENCE SHOWING COMPLICITY OF OTHER ACCUSED.— Antonio's extrajudicial confession as contained in his July 8 *Salaysay* detailing the abduction and killing of Major Arcega cannot be used to convict accused-appellants ***in the absence of independent evidence*** on this charge and on account of the principle of *res inter alios acta alteri nocere non debet* expressed in Section 28, Rule 130 of the Rules of Court [.]. . .

Expounding on [the principle of *res inter alios acta alteri nocere non debet* expressed in Section 28, Rule 130 of the Rules of Court], the Court explained that "[o]n a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him." Thus, as a general rule, an extrajudicial confession is binding only on the confessant.

8. ID.; ID.; ID.; ID.; EXCEPTIONS TO *RES INTER ALIOS ACTA ALTERI NOCERE NON DEBET* RULE; ADMISSION OF A CONSPIRATOR; REQUISITES FOR AN ADMISSION OF A CONSPIRATOR MAY BE RECEIVED AGAINST CO-CONSPIRATORS.— [C]ase law states that "in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (*a*) the conspiracy be first proved by evidence other than the admission itself; (*b*) the admission relates to the common object; and (*c*) it has been made while the declarant was engaged in carrying out the conspiracy."

9. ID.; ID.; ID.; ID.; ID.; ID.; WHEN THERE IS A GLARING DEARTH OF EVIDENCE SHOWING THE PARTICIPATION OF ALL ACCUSED IN THE PLAN OR CONSPIRACY TO COMMIT THE CRIME, AN ACCUSED'S CONFESSION CANNOT BE ADMITTED AGAINST THE CO-ACCUSED. — Here, aside from Antonio's extrajudicial statements in his July 8 *Salaysay*, there is a glaring dearth of evidence showing the participation of accused-appellants in a plan or conspiracy to abduct and kill Major Arcega. As such, Antonio's statement in his July 8 *Salaysay* is binding on him alone; it cannot be admitted against his co-accused and is considered as hearsay against them.

In this light, the Court is constrained to acquit not only herein accused-appellants, but also their co-accused –– except for Antonio who executed the July 8 *Salaysay* –– for the Murder of Major Arcega.

10. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; EFFECTS OF AN APPEAL; A JUDGMENT OF

ACQUITTAL EXTENDS TO THOSE WHO DID NOT APPEAL THE JUDGMENT OF CONVICTION.— While it is true that it was only accused-appellants who successfully perfected their appeal before the Court, it is well to reiterate the rule that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties. Considering that, under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment — as in this case –– shall benefit the co-accused who did not appeal or those who appealed from their judgments of conviction but for one reason or another, the conviction became final and executory, accused-appellants' acquittal for the crime of Murder is likewise applicable to the rest of the accused, save for Antonio, against whom his confession in his July 8 *Salaysay* shall be solely binding, and Cortez, who had since died.

11. CRIMINAL LAW; MURDER; PENALTY AND CIVIL LIABILITY.— [A]ccused Rogelio Antonio *y* Abujuela is found **GUILTY** beyond reasonable doubt of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and accordingly, sentenced to suffer the penalty of *reclusion perpertua* and to pay the heirs of Major Igmedio Arcega the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated July 31, 2017 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 05124, which **affirmed with modification** the Joint Judgment[3] dated April 7, 2011 of the Regional Trial Court of Pasig City, Branch 166 (RTC) finding accused Zaldy Bernardo *y* Espiritu **(Bernardo)**, Monroy Flores *y* Corpuz **(Flores)**, Jesus Time *y* Cabesa (Time), Gilbert Pacpaco *y* Directo (Pacpaco), Gilbert Ramirez *y* Dunego (Ramirez), Danny Cortez[4] *y* Donieto **(Cortez)**, Rogelio Antonio *y* Abujuela[5] (Antonio), Tommy Cabesa[6] *y* Villegas (Cabesa), and Mila Andres Galamay (**Galamay**; collectively, accused) guilty beyond reasonable doubt of the crimes of **Kidnapping for Ransom with Homicide**, as defined and penalized under Article 267 of the Revised Penal Code (RPC), and **Murder**, as defined and penalized under Article 248 of the RPC.

The Facts

The instant case stemmed from two (2) separate Informations filed before the RTC charging accused-appellants **Bernardo**, **Flores**, **Cortez**, and **Galamay** (accused-appellants) and their co-accused with the crimes of Kidnapping for Ransom with Homicide and Murder, the accusatory portions of which read:

---

[1] See Notice of Appeal dated August 22, 2017; *rollo*, pp. 25-26.

[2] Id. at 2-24. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Ramon M. Bato, Jr. and Samuel H. Gaerlan (now a member of this Court), concurring.

[3] CA *rollo*, pp. 165-198. Penned by Presiding Judge Rowena De Juan-Quinagoran.

[4] "Cortes" in some parts of the records.

[5] "Abejuela" in some parts of the records.

[6] "Cabeza" in some parts of the records.

Criminal Case No. 115554-H[7]

That on or about July 2, 1998 at around 8:00 o'clock in the morning, in the Municipality of Cainta, Province of Rizal, above-named accused being private individuals, while conspiring, conniving, confederating and mutually helping one another, did then and there, with criminal and malicious intent willfully, unlawfully and feloniously, for the purpose of extorting ransom from one Dr. Eliezer Andres, Sr. and his family, in the amount of Ten Million Pesos (₱10,000,000.00) Philippine Currency, kidnap, take and carry away Dr. Eliezer Andres, Sr. and brought him to Jalajala, Rizal, which is within the jurisdiction of this Honorable Court, deprived him of his liberty, against his will and consent, accused pursuant to their plans take and carry away the Nissan Sentra of the victim and burned it in Norzagaray, Bulacan; that during his (Dr. Eliezer Andres, Sr.) detention, accused with intent to kill, willfully, unlawfully and feloniously assault and inflict physical harm on the victim and later shoot the victim with a firearm which caused his instantaneous death and afterwards dumped his body in Mabitac, Laguna, to the damage and prejudice of his heirs in such amount as maybe *(sic)* awarded to them by the provision of the Civil Code.

CONTRARY TO LAW.

Criminal Case No. 115555-H[8]

That on or about July 3, 1998, in the Municipality of Jalajala, Province of Rizal, and within the jurisdiction of this Honorable Court, above-named accused, while confederating, conniving conspiring and mutually helping one another, with evident premeditation, taking advantage of superior strength and employing means to weaken the defense of the victim, did then and there, with criminal and malicious intent to kill, willfully, unlawfully, feloniously assault and hit Igmedio U. Arcega with hard instruments, object, article causing the victim to suffer head injuries and with the use of firearm shoot the victim which caused his instantaneous death to the damage and prejudice of his heirs in such amount as maybe (sic) awarded to them by the provisions of the Civil Code.

---

[7] Records, p. 2.

[8] CA *rollo*, p. 30.

CONTRARY TO LAW.

The prosecution alleged that on July 2, 1998, Dr. Eliezer Andres, Sr. (Dr. Andres, Sr.) and retired Major Igmedio Arcega (Major Arcega) went to Sta. Lucia Mall in Cainta, Rizal to separately meet with a group of people selling gold bars. However, Dr. Andres, Sr. did not return from the meeting. His son, Dr. Eliezer Andres, Jr. (Dr. Andres, Jr.), informed Major Arcega that his father was missing. Thus, the two of them returned to the mall to look for Dr. Andres, Sr. On the way, Major Arcega described to Dr. Andres, Jr. the appearance of the five (5) persons whom he and the elder Andres separately met that day.[9]

As Dr. Andres, Jr. went around the mall, he noticed that he was being followed by four (4) suspicious men whose descriptions matched those provided by Major Arcega; three (3) of whom were eventually identified as **Flores**, Cortez, and Pacpaco.[10] Wary of being followed, Dr. Andres, Jr. decided to discontinue his search and went home without finding his father. On the same day, Major Arcega himself also went missing.[11]

Later that evening, Dr. Andres, Jr. received a phone call from a woman who claimed to have custody of his father and demanded ransom money for his release. Dr. Andres, Jr. recognized the voice of the female caller as that of **Galamay**, who was a frequent visitor in the Andres residence and with whom Dr. Andres, Sr. had previous dealings. Dr. Andres, Jr. then reported the matter to the Philippine National Police (PNP) and requested for monitoring and assistance during the payment of the ransom money, which date and place were earlier agreed upon.[12]

Thus, on July 4, 1998, at the actual payment of the ransom money in front of Aladdin Bus Terminal at España, Manila

---

[9] See *rollo*, p. 4.

[10] See id.

[11] See id.

[12] See id.

with the furtive presence of P/C Inspector Arthur de Guzman, P/C Inspector Warren de Leon, and other members of the PNP-Criminal Investigation and Detection Group (PNP-CIDG),[13] Dr. Andres, Jr. saw and identified the group of **Bernardo**, Pacpaco, Time, Cabesa, and Ramirez. Dr. Andres, Jr. personally handed the ransom money in a brown envelope to **Bernardo**, who gave it to Cabesa, who then rode a motorcycle and sped away. The exchange having been completed right there and then, Bernardo, Pacpaco, Time, and Ramirez were arrested by the PNP-CIDG. Meanwhile, the police officers followed Cabesa to a house in Camarin, Caloocan City where they found him together with **Flores**, Antonio, and Cortez in the living room, counting the previously-marked ransom money. They were all arrested and brought to the police station.[14]

Meanwhile, the cadaver of an unidentified male person was discovered at Brgy. Amuyong, Mabitac, Laguna the previous day or on July 3, 1998.[15] The autopsy[16] conducted on the body revealed various injuries[17] and the cause of death was a gunshot wound on the head and asphyxia by strangulation. Later on, Dr. Andres, Jr. positively identified[18] the body as that of his father, Dr. Andres, Sr.

Subsequently, Antonio executed two (2) *Sinumpaang Salaysay* dated July 6[19] and 8,[20] 1998, respectively, with the assistance

---

[13] See id. at 4-5.

[14] See id.

[15] See Letter Request signed by P/Chief Inspector Nilo Buerano Acaylar, Folder of Exhibits, Exhibit "P-4", p. 15.

[16] See Medico-Legal Report No. M-1332-98 dated July 3, 1998, conducted by Police Senior Inspector Tomas D. Suguitan, M.D., Folder of Exhibits, Exhibit "P" including dorsal portions, pp. 12-14.

[17] See Autopsy conducted by Police Senior Inspector Tomas D. Suguitan, M.D., Folder of Exhibits, p. 17.

[18] See TSN, November 27, 2001, p. 39.

[19] Notarized on July 7, 1998. Records, pp. 36-37.

[20] Notarized on July 17, 1998. Id. at 24-26.

of his counsel, Atty. Nicomedes R. Martelino, Jr. In the July 6, 1998 *Sinumpaang Salaysay* (July 6 *Salaysay*), Antonio expressly admitted his and his co-accused's participation in the kidnapping of Dr. Andres, Sr. and confessed that the latter was already dead and that his car was brought to Norzagaray, Bulacan where it was burned.[21] Meanwhile, in the July 8, 1998 *Sinumpaang Salaysay* (July 8 *Salaysay*), Antonio recounted the killing of Major Arcega in a farm in Brgy. Jala-jala, Rizal and likewise, implicated his co-accused in the crime. Upon recovery of Major Arcega's body therefrom — which his son, Joel Arcega, later identified[22] — the autopsy[23] revealed the cause of death to be a gunshot wound and traumatic injuries on the head.

For their part, all the accused, who were arrested on different occasions and in various locations, interposed their own defenses of denial and *alibi*, each asseverating their own versions of torture, wrongful accusation, and frame-up.[24]

The RTC Ruling

In a Joint Judgment[25] dated April 7, 2011, the RTC found all the accused **guilty** beyond reasonable doubt of Kidnapping for Ransom with Homicide in *Criminal Case No. 115554-H*, and accordingly, sentenced each of them to suffer the penalty of *reclusion perpetua* without eligibility for parole[26] and to jointly

---

[21] See Exhibit "T-3", Folder of Exhibits, p. 34. See also Exhibits "R-5" to "R-13" inclusive, and Exhibit "S", pp. 28-32.

[22] See TSN, June 5, 2002, p. 45.

[23] See Medico-Legal Report No. M-1347-98 dated July 8, 1998 issued by Anthony Joselito R. Llamas, M.D., Folder of Exhibits, p. 19. See also Exhibits "Q-2" to "Q-7" inclusive, pp. 20-25.

[24] See CA *rollo*, pp. 175-183 and 191.

[25] Id. at 165-198.

[26] Pursuant to Sections 2 and 3 of Republic Act No. 9346 entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," approved on June 24, 2006. See also A.M. No. 15-08-02-SC entitled "GUIDELINES FOR THE PROPER USE OF THE PHRASE '*WITHOUT ELIGIBILITY FOR PAROLE' IN INDIVISIBLE PENALTIES*" dated August 4, 2015.

and severally indemnify the heirs of Dr. Andres, Sr. the amounts of ₱75,000.00 as civil indemnity, ₱100,000.00 as exemplary damages, ₱100,000.00 for each member of the family as moral damages, and ₱117,455.00 as actual damages. Similarly, the RTC found all the accused guilty beyond reasonable doubt of Murder in *Criminal Case No. 115555-H*, and accordingly, sentenced them to suffer the penalty of *reclusion perpetua* and to jointly and severally indemnify the heirs of Major Arcega the amounts of ₱75,000.00 as civil indemnity and ₱100,000.00 as exemplary damages.[27]

The RTC found the confluence of all the elements[28] of the crime of Kidnapping for Ransom with Homicide, noting that the prosecution had established the participation of all the accused in the crime. On the other hand, the defenses of bare denial and *alibi* were not given weight in light of Dr. Andres, Jr.'s positive identification of the perpetrators of the crime, which were bolstered by the documentary evidence, as well as Antonio's *voluntary* extrajudicial confession. Likewise, the RTC held that the prosecution had sufficiently proved the elements[29] of the crime of Murder in light of Antonio's narration that Major Arcega was hit at the back of his head with a shovel, which eventually caused his death.[30]

---

[27] CA *rollo*, pp. 197-198.

[28] *First*, all the accused in this case are private individuals; *second*, they kidnapped Dr. Andres, Sr. in Sta. Lucia Mall and they detained the victim in a discreet location; *third*, Dr. Andres, Sr. was taken against his will; *fourth*, death was inflicted upon the victim; and *fifth*, money was extorted from the family of the victim for his release (*id.* at 184-185).

[29] *First*, Major Arcega was killed; *second*, the victim was killed by one alias Totoy and Antonio upon instructions by the rest of the accused; *third*, the killing of the victim was well planned and done with treachery; and *fourth*, the killing is not parricide or infanticide (*id.* at 194).

[30] See id. at 193-196.

All the accused appealed[31] their conviction to the CA. However, Antonio and Ramirez subsequently withdrew[32] their appeal, leaving only **Bernardo**, **Flores**, Time, Pacpaco, Cortez, Cabesa, and **Galamay** to pursue theirs.[33]

The CA Ruling

In a Decision[34] dated July 31, 2017, the CA **affirmed** the conviction of Bernardo, Flores, Time, Pacpaco, Cortez, Cabesa, and Galamay but **modified** the amounts of damages awarded, as follows: (a) in *Criminal Case No. 115554-H* for Kidnapping for Ransom with Homicide, to jointly and severally pay the heirs of Dr. Andres, Sr. the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱117,455.00 as actual damages, and; (b) in *Criminal Case No. 115555-H* for Murder, to pay the heirs of Major Arcega the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages.[35]

Echoing the RTC's findings, the CA found the presence of all the elements of the crimes charged, further noting the lack of ill motive on the part of the prosecution witnesses to falsely implicate the accused. Moreover, it ruled that Antonio's extrajudicial confession was voluntarily made with the assistance of an independent counsel, which was supported by the withdrawal of his appeal. The CA added that the identification of Galamay by Dr. Andres, Jr. had been duly established, having known her personally through several real estate dealings. On the other hand, the bare denials of the accused cannot prevail

---

[31] See Notices of Appeal dated April 13, 2011 (*id.* at 205-206) and July 28, 2011 (id. at 209-210).

[32] See Motions to Withdraw Appeal with Prayer for Immediate Issuance of Partial Entry of Judgment dated January 16, 2017 (id. at 431-433) and March 13, 2017 (*id.* at 438-440).

[33] *Rollo*, p. 7.

[34] Id. at 2-24.

[35] Id. at 23.

over the positive and straightforward testimonies of the prosecution witnesses pointing to them as the perpetrators of the crimes.[36]

Only accused-appellants **Bernardo**, **Flores**, **Cortez**, and **Galamay** filed a notice of appeal[37] before the Court.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in affirming accused-appellants' conviction for the crimes charged.

The Court's Ruling

I.

At the outset, it is well to note that during the pendency of this appeal, the Court received a letter[38] dated May 8, 2019 from the Bureau of Corrections stating that one of the accused-appellants, Cortez, had already died on May 17, 2016, as evidenced by copies of his Death Report[39] and Certificate of Death.[40] In light of Cortez' supervening death, the Court is constrained to dismiss the instant criminal actions against him inasmuch as he can no longer stand as an accused herein. In the same vein, the civil action impliedly instituted for the recovery of the civil liability *ex delicto* is likewise *ipso facto* dismissed, grounded as it is on the criminal action. However, it is well to clarify that Cortez' civil liability, if any, in connection with his acts against the victims, may be based on sources other than delicts; in which case, the victims' heirs may file separate civil actions against Cortez' estate, as may be warranted by

---

[36] See id. at 8-22.

[37] See id. at 25-27.

[38] Signed by New Bilibid Prison Superintendent Gerardo F. Padilla; id. at 47.

[39] Signed by Medical Officer III Gerbert S. Madlang-Awa; id. at 48.

[40] Id. at 49.

law and procedural rules.[41] As such, the instant criminal cases must be declared closed and terminated as to Cortez in view of his supervening death.

II.

It is well-settled that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[42]

Guided by the foregoing considerations, and as will be explained hereunder, the Court: (*a*) affirms accused-appellants' and their co-accused's conviction for Kidnapping for Ransom with Homicide of Dr. Andres, Sr.; and (*b*) acquits accused-appellants and their co-accused, except for Antonio, for the Murder of Major Arcega.

Accused-appellants are guilty of the special complex crime of Kidnapping for Ransom with Homicide

The elements of Kidnapping for Ransom under Article 267 of the RPC, as amended, are as follows: (*a*) intent on the part of the accused to deprive the victim of his/her liberty; (*b*) actual deprivation of the victim of his/her liberty; and (*c*) motive of the accused, which is extorting ransom for the release of the victim. In the special complex crime of Kidnapping for Ransom with Homicide, the person kidnapped is killed in the course of

---

[41] See *People v. Monroyo*, G.R. No. 223708, October 9, 2019, citing *People v. Culas*, 810 Phil. 205, 209 (2017).

[42] *Arambulo v. People*, G.R. No. 241834, July 24, 2019, citing *Manansala v. People*, 775 Phil. 514, 520 (2015).

the detention, regardless of whether the killing was purposely sought or was merely an afterthought.[43]

As correctly ruled by the courts *a quo*, the prosecution had established the existence of the aforementioned elements. *Anent the first and second elements*, accused-appellants and their co-accused intended and later on, were able to actually deprive Dr. Andres, Sr. of his liberty when the latter went missing after meeting a group of people in Sta. Lucia Mall on July 2, 1998. Such actual deprivation of Dr. Andres, Sr.'s liberty was confirmed by no less than **Galamay** who informed Dr. Andres, Jr. of such fact via a phone call. *As to the third element*, their motive, which is to extort ransom in exchange for Dr. Andres, Sr.'s release was manifest in: (*a*) **Galamay**'s phone call to Dr. Andres, Jr. in order to demand ransom; (*b*) **Bernardo**, Time, Pacpaco, Ramirez, and Cabesa's receipt of the ransom money from Dr. Andres, Jr. on July 4, 1998 at España, Manila as witnessed by the members[44] of the PNP-CIDG; and (*c*) Cabesa's delivery of the ransom money to **Flores**, **Cortez**, and Antonio, who were all caught while counting the same. Finally, *the last element* is also present as Dr. Andres, Sr. was killed while in detention and his body was found in Mabitac, Laguna.

In this relation, the extrajudicial confession executed by Antonio as embodied in his July 6 *Salaysay* relative to the commission of the kidnapping of Dr. Andres, Sr. is merely *corroborative* of the prosecution evidence on this particular charge. To be admissible, a confession must comply with the following requirements: it "must be (*a*) voluntary; (*b*) made with the assistance of a competent and independent counsel; (*c*) express; and (*d*) in writing."[45] In this case, not only was the prosecution

---

[43] *People v. Cornista*, G.R. No. 218915, February 19, 2020, citing *People v. Ramos*, 358 Phil. 261, 286-287(1998).

[44] P/C Inspector Arthur de Guzman and P/C Inspector Warren de Leon testified that they were part of the team that witnessed how the accused "cased" the vehicle of Dr. Andres, Jr. before taking the ransom money. (See CA *rollo*, pp. 169-172.)

[45] See *People v. Omilig*, 766 Phil. 484, 500 (2015), citing *People v. Tuniaco*, 624 Phil. 345, 352 (2010).

able to establish that these requirements had been complied with, it was also able to show that the contents of Antonio's July 6 *Salaysay* merely *corroborated* independent evidence pointing to accused-appellants as the perpetrators of the crime. Indeed, there is sufficient evidence showing the complicity of accused-appellants beyond moral certainty, consisting in the positive identification of **Bernardo** and **Galamay** by Dr. Andres, Jr., as well as the *in flagrante* arrest of **Flores**. Furthermore, Antonio's July 6 *Salaysay* was executed *after* his co-conspirators had been duly identified and arrested. If at all, aside from the corroboration it lent to the prosecution evidence, it additionally provided details that only persons privy to the kidnapping can supply, *i.e.*, the place where Dr. Andres, Sr. was detained and the fact that his vehicle had been burned and abandoned in Norzagaray, Bulacan.[46]

Therefore, the Court finds no reason to overturn the courts *a quo*'s findings in relation to accused-appellants' (and their co-accused's) commission of the special complex crime of Kidnapping for Ransom with Homicide, as there was no showing that the courts *a quo* overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. It bears pointing out that the trial court — whose findings were affirmed by the CA — was in the best position to assess and determine the credibility of the witnesses by both parties.[47]

Accused-appellants must be acquitted of Murder

In contrast to the above, Antonio's extrajudicial confession as contained in his July 8 *Salaysay* detailing the abduction and killing of Major Arcega cannot be used to convict accused-appellants ***in the absence of independent evidence*** on this charge and on account of the principle of *res inter alios acta alteri nocere non debet* expressed in Section 28, Rule 130 of the Rules of Court, which states:

---

[46] See July 6, 1998 *Sinumpaang Salaysay*; records, pp. 36-37.

[47] See *People v. Naciongayo*, G.R. No. 243897, June 8, 2020, citing *Cahulogan v. People*, 828 Phil. 742, 749 (2018).

Section 28. *Admission by third-party*. — The rights of a third party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

Expounding on this rule, the Court explained that "[o]n a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him."[48] Thus, as a general rule, an extrajudicial confession is binding only on the confessant.[49] As an exception, Section 30, Rule 130 of the same Rules allows the *admission of a conspirator*, provided the conditions therefor are satisfied, *viz.*:

Section 30. *Admission by conspirator*. — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator **after the conspiracy is shown by evidence other than such act or declaration**. (Emphasis supplied)

In this regard, case law states that "in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (*a*) the conspiracy be first proved by evidence other than the admission itself; (*b*) the admission relates to the common object; and (*c*) it has been made while the declarant was engaged in carrying out the conspiracy."[50] Here, aside from Antonio's extrajudicial statements in his July 8 *Salaysay*, there is a glaring dearth of evidence showing the participation of accused-appellants in a plan or conspiracy to abduct and kill Major Arcega. As such,

---

[48] *Salapuddin v. CA*, 704 Phil. 577, 601 (2013), citing *Tamargo v. Awingan*, 624 Phil. 312, 327 (2010).

[49] See id. at 600.

[50] *People v. Cachuela*, 710 Phil. 728, 741 (2013), citing *People v. Bokingo*, 671 Phil. 71, 93 (2011).

Antonio's statement in his July 8 *Salaysay* is binding on him alone; it cannot be admitted against his co-accused and is considered as hearsay against them.[51]

In this light, the Court is constrained to acquit not only herein accused-appellants, but also their co-accused — except for Antonio who executed the July 8 *Salaysay* — for the Murder of Major Arcega. This is pursuant to Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, which reads:

> Section 11. *Effect of appeal by any of several accused.* —
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

While it is true that it was only accused-appellants who successfully perfected their appeal before the Court, it is well to reiterate the rule that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties.[52] Considering that, under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment — as in this case — shall benefit the co-accused who did not appeal or those who appealed from their judgments of conviction but for one reason or another, the conviction became final and executory,[53] accused-appellants' acquittal for the crime of Murder is likewise applicable to the rest of the accused, save for Antonio, against whom his confession in his July 8 *Salaysay* shall be solely binding, and Cortez, who had since died.

Finally, and in light of prevailing jurisprudence, Antonio should pay the heirs of Major Arcega the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for the crime of Murder, all with legal

---

[51] See *Salapuddin v. CA*, supra note 48, at 600.

[52] See *People v. Libre*, G.R. No. 235980, August 20, 2018, citing *Benabaye v. People*, 755 Phil. 144, 157 (2015).

[53] See *Benabaye v. People*, id. at 157.

interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.[54]

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated July 31, 2017 rendered by the Court of Appeals in CA-G.R. CR-HC No. 05124 is hereby **AFFIRMED** with **MODIFICATION** as follows:

(1) In *Criminal Case No. 115554-H*, accused-appellants Zaldy Bernardo *y* Espiritu, Monroy Flores *y* Corpuz, and Mila Andres Galamay are found **GUILTY** beyond reasonable doubt of Kidnapping for Ransom with Homicide, as defined and penalized under Article 267 of the Revised Penal Code, and accordingly, sentenced to each suffer the penalty of *reclusion perpetua* without eligibility for parole and to jointly and severally indemnify the heirs of Dr. Eliezer Andres, Sr. the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱117,455.00 as actual damages, all with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment. On the other hand, the case is **DISMISSED**, and hereby **DECLARED CLOSED** and **TERMINATED** insofar as accused-appellant Danny Cortez *y* Donieto is concerned by reason of his supervening death; and

(2) In *Criminal Case No. 115555-H*, accused Rogelio Antonio *y* Abujuela is found **GUILTY** beyond reasonable doubt of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and accordingly, sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of Major Igmedio Arcega the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, all with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment. On the other hand, accused-appellants Zaldy Bernardo *y* Espiritu, Monroy Flores *y* Corpuz, and Mila Andres Galamay, as well as accused Jesus Time *y*

---

[54] See *People v. Jugueta*, 783 Phil. 806 (2016).

Cabesa, Gilbert Pacpaco *y* Directo, Gilbert Ramirez *y* Dunego, and Tommy Cabesa *y* Villegas are **ACQUITTED** for insufficiency of evidence. Finally, the case is **DISMISSED**, and hereby **DECLARED CLOSED** and **TERMINATED** insofar as accused-appellant Danny Cortez *y* Donieto is concerned by reason of his supervening death.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and *Rosario,*[*] *JJ.*, concur.

[*] Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[A.C. No. 12446. November 16, 2020]

ROSALINA TAGHOY, *ET AL.,* *Complainants, v.* **ATTY. CONSTANTINE TECSON III,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; FAILURE TO FILE THE NECESSARY PLEADINGS RENDERS THE ERRING LAWYER LIABLE.— Lawyers are not obliged to advocate for every person who requests to be their client. However, once they agree to take up the client's cause, they owe fidelity to such cause and must be mindful of the trust and confidence reposed to them. Lawyers who undertake an action are expected to attend to their client's cause until it becomes final and executory.

Atty. Tecson failed to measure up to these standards. He neglected to file his clients' position paper and appeal memorandum in the ejectment case. In *Canoy v. Atty. Ortiz*, we held that the lawyer's failure to file the necessary pleading is *per se* a violation of Rule 18.03 of the CPR, which requires that "*a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable*." Concomitant with this duty is Canon 17, which provides that "*a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.*" . . .

To be sure, Atty. Tecson did not exert any effort to ensure that his clients' cause will not be prejudiced. His failure to do so led to the dismissal of his clients' appeal. Atty. Tecson breached his duty to serve his client with competence and diligence as provided under Canon 18 of the CPR.

Furthermore, Atty. Tecson violated his duty when he did not file the annulment of title case after receiving his professional fees. He agreed to represent complainants and to file the case. It was his idea to file it in the first place.

2. ID.; ID.; ID.; LAWYER'S PERSONAL PROBLEMS AND HEAVY WORKLOAD CANNOT JUSTIFY THEIR NEGLECT OR INFRACTIONS.— Atty. Tecson's claim that he had personal problems and a heavy workload is a lame excuse that cannot justify his infractions. He could have taken available remedies to ensure that the position paper and the appeal memorandum were filed. He could have recommended the hiring of a collaborating counsel or could have requested for more time to file the pleadings if available.

3. ID.; ID.; ID.; NEGLIGENCE TO PROTECT CLIENTS' CAUSE; PENALTY; THE VOLUNTARY RETURN OF PROFESSIONAL FEES MITIGATES THE ERRING LAWYER'S ADMINISTRATIVE LIABILITY.— [W]e find Atty. Tecson administratively liable for his negligence to protect his clients' cause in the ejectment proceedings and his inaction in filing the annulment of title proceedings.

. . .

The appropriate penalty to impose on an erring lawyer rests within the Court's sound discretion based on the facts involved.

. . .

Here, Atty. Tecson did not file the necessary pleadings in the ejectment case, which then caused the dismissal of the complainants' appeal to the ejectment case. He also did not file the annulment of title case despite receipt of his professional fees. However, we observed that he made an effort to reach out to the complainants and voluntarily returned the amount of ₱76,000.00. These should mitigate his administrative liability. Accordingly, we find that a suspension of three months would be commensurate to Atty. Tecson's infraction.

D E C I S I O N

LOPEZ, *J.*:

Lawyers must always serve their clients with competence and diligence. Here, we determine the administrative liability of a lawyer who failed to abide by this standard.

ANTECEDENTS

Sometime in 2006, complainants[1] engaged the legal services of Atty. Constantine Tecson III (Atty. Tecson) as counsel in an ejectment case filed against them by a certain Rayos. They paid him ₱5,000.00 to file a motion for reconsideration.[2] After evaluating the case, Atty. Tecson opined that Rayos' transfer certificate of title (TCT) was questionable and advised complainants to file a separate case to annul Rayos' TCT. The complainants agreed to file the separate case and paid Atty. Tecson a total of ₱71,000.00 as of February 2006, representing partial payment of the professional fees.[3]

In the meantime, Atty. Tecson failed to file the complainants' position paper in the ejectment case despite the court's order, as well as the appeal memorandum, which caused the dismissal of the complainants' appeal to the ejectment case.[4] Allegedly, Atty. Tecson assured the complainants that he filed the necessary pleadings, but this proved to be false upon verification with the court. Atty. Tecson also did not file the case for the annulment of Rayos' TCT. Accordingly, complainants asked Atty. Tecson to refund the ₱71,000.00 and the ₱5,000.00 which they paid to him.

Atty. Tecson refused to refund the amount, which prompted the complainants to file the instant disbarment case.

In its *Report and Recommendation*,[5] the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD)

---

[1] Rosalina Taghoy, Rey Vicente, Dominador Buenviaje, Rebecca Narvasa, Edison Cau, Egmedio Dela Rosa, Erlinda Plaga, Marina Macalalad, Teresita Taghoy, Domingo Navidad, Dante Baluitan, and Emmanuel Nati. *Rollo*, pp. 3-5.

[2] *Id.* at 2.

[3] *Id*. at 2-3. The complainants paid varying amounts of ₱5,000.00, ₱4,000.00, and ₱3,000.00 each.

[4] *Id.* at 3.

[5] *Id.* at 40-43. Commissioner Maria Editha A. Go-Binas signed the report and recommendation.

found that Atty. Tecson disregarded his duty to his client in violation of Canon 18, Rules 18.01, 18.02, 18.03, and 18.04 of the Code of Professional Responsibility (CPR) when he did not file the necessary pleadings in the ejectment and annulment of title cases.[6] The IBP-CBD recommended that Atty. Tecson be suspended from the practice of law for one (1) year.[7]

On September 27, 2014, the IBP Board of Governors adopted the IBP-CBD's recommendation but modified the suspension from one (1) year to two (2) years and ordered Atty. Tecson to return the ₱76,000.00 paid by the complainants.[8]

Atty. Tecson moved for reconsideration. He manifested that he already "patched-up" with the complainants and voluntarily returned the ₱76,000.00. Atty. Tecson claimed that his professional service was limited to the filing of the annulment of Rayos' TCT and did not include the representation of complainants in the ejectment case. However, he still represented the complainants because they need help during those times. Atty. Tecson explained that he failed to file the necessary pleadings and attend the hearing because of his workload and personal problems.

On August 31, 2017, the IBP Board of Governors partly granted Atty. Tecson's motion and issued an extended Resolution.[9] The IBP reduced the suspension to one (1) year, which it deemed commensurate to the infraction committed, and deleted the order to return the ₱76,000.00 after finding that Atty. Tecson already returned the amount to complainants.

Thereafter, the records of this case were transmitted to this court for review.

---

[6] *Id.* at 42-43.

[7] *Id.* at 43.

[8] *Id.* at 39.

[9] *Id.* at 54-58.

RULING

We adopt the IBP Board of Governor's findings but modify the penalty.

Lawyers are not obliged to advocate for every person who requests to be their client.[10] However, once they agree to take up the client's cause, they owe fidelity to such cause and must be mindful of the trust and confidence reposed to them.[11] Lawyers who undertake an action are expected to attend to their client's cause until it becomes final and executory.[12]

Atty. Tecson failed to measure up to these standards. He neglected to file his clients' position paper and appeal memorandum in the ejectment case. In *Canoy v. Atty. Ortiz*,[13] we held that the lawyer's failure to file the necessary pleading is *per se* a violation of Rule 18.03 of the CPR,[14] which requires that "*a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable*."[15] Concomitant with this duty is Canon 17, which provides that "*a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.*"[16]

Atty. Tecson's claim that he had personal problems and a heavy workload is a lame excuse that cannot justify his infractions. He could have taken available remedies to ensure that the position paper and the appeal memorandum were filed. He could have recommended the hiring of a collaborating counsel or could have requested for more time to file the pleadings if

---

[10] *Villaflores v. Atty. Limos* (Resolution), 563 Phil. 453, 460 (2007).

[11] *Id.*

[12] *Id.*

[13] 493 Phil. 553 (2005).

[14] *Id.* at 560.

[15] *Id.* at 558.

[16] *Id.*

available.[17] To be sure, Atty. Tecson did not exert any effort to ensure that his clients' cause will not be prejudiced. His failure to do so led to the dismissal of his clients' appeal. Atty. Tecson breached his duty to serve his client with competence and diligence, as provided under Canon 18 of the CPR.

Furthermore, Atty. Tecson violated his duty when he did not file the annulment of title case after receiving his professional fees. He agreed to represent complainants and to file the case. It was his idea to file it in the first place. He cannot excuse himself by alleging that he did not receive the ₱71,000.00 and that he was tricked by a certain Joseph Bermoy in signing documents acknowledging receipt of the initial payment of his professional fees. Aside from lacking in support, we cannot credit Atty. Tecson's bare allegation because he is a lawyer who must be aware of the importance of signatures in documents.

All told, we find Atty. Tecson administratively liable for his negligence to protect his clients' cause in the ejectment proceedings and his inaction in filing the annulment of title proceedings.

Proper penalty

The appropriate penalty to impose on an erring lawyer rests within the Court's sound discretion based on the facts involved. In the following cases, the Court imposed penalties ranging from reprimand to suspension, and even disbarment in aggravated cases.

In *Voluntad-Ramirez v. Atty. Bautista*,[18] we declared the erring lawyer negligent when he did not file the appropriate criminal proceedings despite receipt of the acceptance fees. The Court admonished the erring lawyer to exercise greater care and diligence in the performance of his duty and ordered him to restitute the amount.

---

[17] See *Canoy v. Atty. Ortiz, supra*, at 559.

[18] 697 Phil. 1 (2012) (Resolution).

In *Endaya v. Atty. Oca*,[19] the erring lawyer failed to file the appeal memorandum, which prejudiced his clients, and he did not inform the court of his intent not to file the pleadings to prevent delay in the disposition of the case. The Court suspended the respondent-attorney for two (2) months after considering the following extenuating circumstances: (1) complainant therein misrepresented that his answer was prepared by someone who is not a lawyer; (2) complainant assured the respondent-attorney that he had strong evidence to support his defense; (3) respondent-attorney is a lawyer of the Public Attorney's Office (PAO) and it is of public knowledge that the PAO is burdened with a heavy caseload.[20]

Meanwhile, in *Villaflores v. Atty. Limos*,[21] we found the erring lawyer grossly negligent in failing to file the appellant's brief within the reglementary period. Because of such negligence, the complainant faced the risk of losing entirely her right to appeal and had to engage the services of another lawyer to protect such a right. We suspended him from the practice of law for three (3) months.

Nonato v. Atty. Fudolin, Jr.[22] demonstrates the brazenness in the erring lawyer's act of negligently handling his client's cause in an ejectment case and his failure to inform his client on the status of the case. The Court found that the lawyer misrepresented about his health and there was an absence of genuine effort on his part to inform his client on the dismissal of the case. We suspended the erring lawyer for two (2) years for violating Canons 17 and 18, and Rules 18.03 and 18.04 of the CPR.

In *Mariveles v. Atty. Mallari*,[23] we disbarred the erring lawyer for his failure to file the appellant's brief despite numerous

---

[19] 457 Phil. 314 (2003).

[20] *Id.* at 330-331.

[21] 563 Phil. 453 (2007) (Resolution).

[22] 760 Phil. 52 (2015).

[23] 292 Phil. 34 (1993).

requests for extension of time, totaling 245 days, resulting in the dismissal of the appeal.

Here, Atty. Tecson did not file the necessary pleadings in the ejectment case, which then caused the dismissal of the complainants' appeal to the ejectment case. He also did not file the annulment of title case despite receipt of his professional fees. However, we observed that he made an effort to reach out to the complainants and voluntarily returned the amount of ₱76,000.00. These should mitigate his administrative liability. Accordingly, we find that a suspension of three months would be commensurate to Atty. Tecson's infraction.

FOR THESE REASONS, the Court **SUSPENDS** respondent Atty. Constantine Tecson III from the practice of law for a period of three (3) months, effective upon the receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo, Lazaro-Javier,* and *Rosario,*[*] *JJ.*, concur.

---

[*] Designated as additional Member per Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[A.C. No. 12792. November 16, 2020]

JOEL A. PILAR, *Complainant, v.* **ATTY. CLARENCE T. BALLICUD,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; PROSCRIPTION AGAINST REPRESENTATION OF CONFLICTING INTERESTS; A LAWYER IS PROHIBITED FROM REPRESENTING CONFLICTING INTERESTS BECAUSE THE NATURE OF A LAWYER-CLIENT RELATIONSHIP IS ONE OF TRUST AND CONFIDENCE OF THE HIGHEST DEGREE. — The nature of a lawyer-client relationship is one of trust and confidence of the highest degree. Necessity and public interest require that it be so to encourage the client to entrust his case to his lawyer. Otherwise, the entire profession will suffer and the administration of justice will be compromised. To preserve this fiduciary relationship and protect the public's trust in the legal system, a lawyer is prohibited from representing conflicting interests under Rule 1.02, Canon 1, in relation to Rule 15.03, Canon 15, of the Code of Professional Responsibility [(CPR)].

2. ID.; ID.; ID.; INSTANCES WHEN THE PROSCRIPTION AGAINST REPRESENTATION OF CONFLICTING INTERESTS APPLIES. — The proscription against representation of conflicting interests applies to situations where opposing parties are represented by the same lawyer in the same, or an unrelated action. It also applies even if a lawyer would not be called upon to contend for one client, or that there would be no occasion to use the confidential information acquired from one client to the other's disadvantage.

3. ID.; ID.; ID.; ID.; TEST TO DETERMINE THE EXISTENCE OF CONFLICT OF INTEREST; ACCEPTANCE OF A NEW RELATION WHICH INVITES SUSPICION OF UNFAITHFULNESS OR DOUBLE-DEALING CONSTITUTES CONFLICT OF INTEREST. — The

determining factor is whether acceptance of the new relation will prevent a lawyer from fulfilling his duty of undivided fidelity and loyalty to his client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.

. . .

This case falls under . . .[this] test. Atty. Ballicud caused the registration of EAT with the SEC on March 27, 2013, or before the termination of his services with KWP in July 2013. Atty. Ballicud occupied the highest position as EAT's President and major stockholder. The primary purpose of EAT is to engage in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with industrial supplies, equipment, and other related products and components on wholesale and retail basis, including importing and exporting of said products. Meanwhile, the primary purpose of KWP is to engage "in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with wear resistant linings and other industrial supplies and other related products and components on wholesale basis." Considering that EAT and KWP's primary purposes are the same, save for the inclusion of "wear resistant linings" as KWP's product and the phrase "retail basis including importing and exporting of said products" in EAT's primary purpose, both companies clearly belong to the same industry. In the circumstances, Atty. Ballicud's new relation with EAT would prevent the full discharge of his duty of undivided fidelity and loyalty to KWP and would invite suspicion of unfaithfulness or double-dealing in the performance of his duty.

4. ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY IS NOT REQUIRED FOR THE PROSCRIPTION AGAINST REPRESENTATION OF CONFLICTING INTERESTS TO APPLY, SINCE THE IMPORTANT CRITERION IS THE PROBABIITY, AND NOT THE CERTAINTY, OF CONFLICT. — Atty. Ballicud's contentions that he never handled a case for, or against KWP and that he has no knowledge of any confidential information relating to KWP's business operations are of no moment. In *Quiambao v. Atty. Bamba*, we emphasized that actual case or controversy is not required for the proscription against representation of conflicting interests

to apply. The important criterion is the probability, and not the certainty, of conflict. . . .

. . .

Thus, whether Atty. Ballicud is Spouses Gabriel's dummy, or that he has confidential information about KWP's business operations, the fact that Atty. Ballicud's actions invited suspicion of unfaithfulness, or double-dealing remains. Atty. Ballicud is guilty of misconduct for representing conflicting interests.

5. ID.; ID.; ID.; MISCONDUCT; SETTING UP A NEW CORPORATION ENGAGED IN A BUSINESS COMPETING THAT OF A CLIENT AMOUNTS TO MISCONDUCT FOR REPRESENTING CONFLICTING INTEREST. — In this case, Pilar failed to prove and identify the confidential information about KWP's business operations, which Atty. Ballicud failed to protect. Also, Pilar failed to establish Atty. Ballicud's use of such confidential information for his personal gain. What has been clearly established is that Atty. Ballicud is guilty of misconduct for representing conflicting interest by setting up another corporation engaged in a business competing with KWP. Thus, Atty. Ballicud failed to observe candor, fairness, and loyalty in his dealings and transactions with KWP in violation of Rule 15.03, Canon 15, in relation to Rule 1.02, Canon 1 of the CPR.

APPEARANCES OF COUNSEL

Jovellanos-Kho Malcontento & Associates Law Offices for complainant.

R E S O L U T I O N

LOPEZ, *J.*:

For resolution is a Complaint for Disbarment[1] dated November 10, 2016 filed by Joel A. Pilar (Pilar) charging respondent Atty. Clarence T. Ballicud (Atty. Ballicud) with conflict of interest,

[1] *Rollo,* Vol. I (1), pp. 1-9.

in violation of Kalenborn Weartech Philippines' (KWP), trust and confidence by establishing and running a competing company, Engel Anlagen Technik Phils., Inc. (EAT), while still serving as its legal counsel in 2013.

ANTECEDENTS

KWP is a corporation registered with the Securities and Exchange Commission (SEC) on January 3, 2007,[2] primarily engaged in manufacturing, distributing, and dealing wear resistant linings, other industrial supplies and related products.[3] KWP engaged the services of Atty. Ballicud to draft legal documents, such as policy on retirement benefits, voluntary resignation, and shareholder's agreement, from 2010 to 2013.[4]

After the termination of Atty. Ballicud's engagement, [KWP came across EAT, a company engaged in selling, assembling, and distributing electrical products],[5] and other merchandise similar to KWP's products. Allegedly, KWP had previously lost several project bids to EAT that resulted in the loss of clients and business opportunities on their part. This prompted KWP to investigate about EAT. KWP found out that EAT was registered with the SEC on March 27, 2013, with Atty. Ballicud as its President and one of the incorporators.[6] Further investigation revealed that the other incorporators are the nephews of KWP's former President, Dennis M. Gabriel (Dennis),[7] who resigned in 2014.[8]

Thus, on November 10, 2016, KWP's Vice President for Technical and Sales,[9] Pilar, filed a disbarment complaint against

---

[2] *Id*. at 13.

[3] *Id*. at 3.

[4] *Id*. at 3-4.

[5] *Rollo*, Vol. II, p. 33.

[6] *Rollo*, Vol. I (1), p. 5.

[7] *Rollo*, Vol. II, p. 8.

[8] *Supra* note 6.

[9] *Supra* note 1, at 1.

Atty. Ballicud with the Integrated Bar of the Philippines (IBP) for representing clients with conflicting interests.

Pilar claimed that when Atty. Ballicud served as KWP's legal counsel from 2010 to July 2013, he had ample opportunity and time to study KWP's business operations. Atty. Ballicud then used the confidential information he received as KWP's retained counsel to build EAT and profit at the expense of KWP. Further, Pilar discovered that while Atty. Ballicud was EAT's President and major shareholder,[10] Spouses Dennis and Marianne Gabriel (Spouses Gabriel), KWP's former President and Corporate Secretary, respectively, actually own and operate EAT.[11] Spouses Gabriel represented EAT in all its dealings with clients and Atty. Ballicud never participated in the operations nor represented EAT in its affairs.[12] Atty. Ballicud, therefore, acted as Spouses Gabriel's dummy[13] to circumvent KWP's policy of non-compete and non-pirating.[14] Pilar also discovered that EAT pirated some of KWP's employees.[15] The circumstances show that Atty. Ballicud incorporated EAT and took advantage of his connection with Dennis, used KWP's connections, stole KWP's clients, pirated KWP's employees, and applied KWP's operations for his and Dennis' gain.[16] Thus, Atty. Ballicud violated Rule 1.02, Canon 1; Rule 7.03, Canon 7; Rules 15.03 and 15.07, Canon 15; Rule 19.02, Canon 19; and Rule 21.02, Canon 21 of the Code of Professional Responsibility (CPR).[17]

---

[10] *Rollo*, Vol. I (1), pp. 117-123, EAT's Amended Articles of Incorporation. See also *Rollo*, Vol. II, p. 625.

[11] *Rollo*, Vol. II, p. 10.

[12] *Id*. at 625.

[13] *Id*. at 8.

[14] *Id*. at 15.

[15] *Id*. at 10.

[16] *Id*. at 15-16.

[17] *Id*. at 20-21.

As a defense, Atty. Ballicud insisted that there was no law prohibiting him from setting up a business. EAT started its operation in December 2013, after the termination of his engagement with KWP in March 2013.[18] Further, EAT's primary purpose is different from KWP because EAT is engaged more in retail business than in wholesale business. Atty. Ballicud explained that his duty as KWP's counsel was limited to contracts and documents review; he did not represent KWP in any case. As such, he did not know any confidential information about KWP's operations, and there was no conflict of interest on his part.[19]

IBP's Recommendation and Action

On February 20, 2018, the Investigating Commissioner of the Commission on Bar Discipline, IBP,[20] found Atty. Ballicud guilty of violating the prohibition against the representation of conflicting interests under Rule 15.03 of the CPR for putting up a corporation in direct competition, at least in the wholesale market, with his existing client. The Investigating Commissioner recommended Atty. Ballicud's suspension from the practice of law for one year, *viz.*:

> It is, therefore, respectfully recommended that the respondent be SUSPENDED from the practice of the legal profession for a period of one (1) year.[21]

In a Resolution[22] dated June 28, 2018, the IBP Board of Governors adopted the factual findings and recommendation of the Investigating Commissioner, thus:

---

[18] Later on, Atty. Ballicud admitted in his position paper that he was KWP's retained counsel up until July 2013; see *rollo*, Vol. I (1), p. 135.

[19] *Rollo*, Vol. I (1), pp. 91-94.

[20] *Rollo*, Vol. III (IV), pp. 2-9; Report and Recommendation, penned by Commissioner Jose Alfonso M. Gomos.

[21] *Id*. at 9.

[22] *Id*. at 1.

CBD Case No. 16-5163
Joel A. Pilar vs.
Atty. Clarence T. Ballicud

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon the Respondent the penalty of ***SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE (1) YEAR****.*

Atty. Ballicud filed a Motion for Reconsideration[23] dated October 29, 2018, which was denied by the IBP Board of Governors in a Resolution[24] on May 27, 2019, as follows:

CBD Case No. 16-5163
Joel Pilar vs.
Atty. Clarence T. Ballicud

RESOLVED to DENY the Respondent's Motion for Reconsideration there being no new reasons or arguments adduced to justify the reversal of the previous decision of the Board of Governors.[25]

Thereafter, the entire records of the case were transmitted to this Court for review.

RULING

We agree with the factual findings of the IBP. However, the Court deems it proper to modify the penalty.

The nature of a lawyer-client relationship is one of trust and confidence of the highest degree.[26] Necessity and public interest require that it be so to encourage the client to entrust his case to his lawyer.[27] Otherwise, the entire profession will suffer and

---

[23] *Id*. at 10-16.

[24] *Rollo*, Vol. III, p. 31.

[25] *Id*.

[26] *Perez v. Atty. De la Torre*, 520 Phil. 419, 423-424 (2006), cited in *Samson v. Atty. Era*, 714 Phil. 101, 112 (2013).

[27] *Mercado v. Atty. Vitriolo*, 498 Phil. 49, 57 (2005), citing *Regala v. Sandiganbayan*, 330 Phil. 678, 699 (1996), citing Agpalo, Ruben, Legal Ethics, 1992 ed., p. 136; and *Hilado v. David*, 84 Phil. 569, 579 (1949).

the administration of justice will be compromised. To preserve this fiduciary relationship and protect the public's trust in the legal system, a lawyer is prohibited from representing conflicting interests under Rule 1.02, Canon 1, in relation to Rule 15.03, Canon 15, of the CPR, thus:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

Rule 1.02. — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

Rule 15.03. — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The proscription against representation of conflicting interests applies to situations where opposing parties are represented by the same lawyer in the same, or an unrelated action. It also applies even if a lawyer would not be called upon to contend for one client, or that there would be no occasion to use the confidential information acquired from one client to the other's disadvantage.[28] The determining factor is whether acceptance of the new relation will prevent a lawyer from fulfilling his duty of undivided fidelity and loyalty to his client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.[29]

In *Aniñon v. Atty. Sabitsana, Jr.*,[30] we identified three tests developed by jurisprudence to determine the existence of conflict of interest. *First*, whether a lawyer is duty-bound to fight for an issue, or claim on behalf of one client and, at the same time,

---

[28] *Quiambao v. Atty. Bamba*, 505 Phil. 126, 134 (2005).

[29] See *Tiania v. Atty. Ocampo*, 277 Phil. 537, 545 (1991); and *Hornilloa v. Atty. Salunat*, 453 Phil. 108, 112 (2003).

[30] 685 Phil. 322 (2012).

to oppose that claim for the other client. *Second*, whether acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. *Third*, whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

This case falls under the *second* test. Atty. Ballicud caused the registration of EAT with the SEC on March 27, 2013, or before the termination of his services with KWP in July 2013.[31] Atty. Ballicud occupied the highest position as EAT's President and major stockholder. The primary purpose of EAT is to engage in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with industrial supplies, equipment, and other related products and components on wholesale and retail basis, including importing and exporting of said products.[32] Meanwhile, the primary purpose of KWP is to engage "in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with wear resistant linings and other industrial supplies and other related products and components on wholesale basis."[33] Considering that EAT and KWP's primary purposes are the same, save for the inclusion of "wear resistant linings" as KWP's product and the phrase "retail basis including importing and exporting of said products" in EAT's primary purpose, both companies clearly belong to the same industry. In the circumstances, Atty. Ballicud's new relation with EAT would prevent the full discharge of his duty of undivided fidelity and loyalty to KWP and would invite suspicion of unfaithfulness or double-dealing in the performance of his duty.

Atty. Ballicud's contentions that he never handled a case for, or against KWP and that he has no knowledge of any

---

[31] *Rollo*, Vol. I (1), p. 135.

[32] *Id*. at 117.

[33] *Id*. at 17.

confidential information relating to KWP's business operations are of no moment. In *Quiambao*,[34] we emphasized that actual case or controversy is not required for the proscription against representation of conflicting interests to apply. The important criterion is the probability, and not the certainty, of conflict, *viz.*:

> It must be noted that the **proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be.** It applies **even if the conflict pertains to the lawyer's private activity or in the performance of a function in a non-professional capacity.** In the process of determining whether there is a conflict of interest, an **important criterion is probability, not certainty, of conflict**.
>
> **Since the respondent has financial or pecuniary interest in SESSI, which is engaged in a business competing with his client's, and, more importantly, he occupies the highest position in SESSI, one cannot help entertaining a doubt on his loyalty to his client AIB. This kind of situation passes the second test of conflict of interest, which is whether the acceptance of a new relationship would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty**. The close relationship of the majority stockholders of both companies does not negate the conflict of interest. Neither does his protestation that his shareholding in SESSI is "a mere pebble among the sands."
>
> **In view of all of the foregoing, we find the respondent guilty of serious misconduct for representing conflicting interests.**[35] (Emphases supplied and citation omitted.)

Thus, whether Atty. Ballicud is Spouses Gabriel's dummy, or that he has confidential information about KWP's business operations, the fact that Atty. Ballicud's actions invited suspicion of unfaithfulness, or double-dealing remains. Atty. Ballicud is guilty of misconduct for representing conflicting interests.

---

[34] *Quiambao v. Atty. Bamba*, 505 Phil. 126 (2005).

[35] *Id.* at 137.

In cases where a lawyer was found guilty of representing conflicting interests, the Court imposed a penalty of one to three years suspension from the practice of law.[36]

In *Quiambao*, we suspended the erring lawyer from the practice of law for representing opposing clients and for being an incorporator, stockholder, and president of a security agency at the time when he was still the legal counsel of another security agency. Likewise, in *Tiania*[37] we imposed a one-year suspension on a lawyer who represented his client in an ejectment case and gave legal advice to the defendant in the same case. Once again, the erring lawyer represented his client in another case and handled the adverse party's legal documents in a separate case. In *Aniñon*,[38] we also imposed a one-year suspension from the practice of law on a lawyer who prepared a Deed of Sale for his client but later on filed for its annulment on behalf of another client.

Meanwhile, in *Samson v. Atty. Era*,[39] we suspended a lawyer for two years when, after filing an estafa case for his client, he later on, represented the accused in other criminal cases involving the same pyramiding scam. The Court did not give credence to the lawyer's contention that his relationship with his previous client has already been terminated. The Court, in *Paces Industrial Corp. v. Salandanan*,[40] imposed a more severe penalty of suspension for three years on a lawyer who represented conflicting interests and deliberately used the information he obtained from his previous client to benefit the adverse party in the same case.

---

[36] *Id*. at 139, citing *Vda. de Alisbo v. Jalandoon*, 276 Phil. 349 (1991); *PNB v. Cedo*, 312 Phil. 904 (1995); *Maturan v. Gonzales*, 350 Phil. 882 (1998); and *Northwestern University, Inc. v. Atty. Arquillo*, 503 Phil. 466 (2005).

[37] *Tiania v. Atty. Ocampo*, 277 Phil. 537 (1991).

[38] *Aniñon v. Atty. Sabitsana, Jr.*, *supra* note 30.

[39] 714 Phil. 101 (2013).

[40] 814 Phil. 93 (2017).

In this case, Pilar failed to prove and identify the confidential information about KWP's business operations, which Atty. Ballicud failed to protect. Also, Pilar failed to establish Atty. Ballicud's use of such confidential information for his personal gain. What has been clearly established is that Atty. Ballicud is guilty of misconduct for representing conflicting interest by setting up another corporation engaged in a business competing with KWP. Thus, Atty. Ballicud failed to observe candor, fairness, and loyalty in his dealings and transactions with KWP in violation of Rule 15.03, Canon 15, in relation to Rule 1.02, Canon 1 of the CPR.

Taking all of the above and relevant jurisprudence into account, the Court finds it proper to suspend Atty. Ballicud from the practice of law for a period of six (6) months.

FOR THESE REASONS, respondent Atty. Clarence T. Ballicud is GUILTY of violating Rule 1.02, Canon 1, and Rule 15.03, Canon 15 of the Code of Professional Responsibility. Atty. Clarence T. Ballicud is **SUSPENDED** from the practice of law for six (6) months. He is **WARNED** that a repetition of the same or similar wrongdoing in the future will be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon respondent's receipt of this resolution. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this resolution be furnished the Office of the Bar Confidant to be included in the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo, Lazaro-Javier,* and *Rosario,*[*] *JJ.*, concur.

---

[*] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

THIRD DIVISION

[G.R. No. 217656. November 16, 2020]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *Petitioner, v.* **EDDIE MANALO, RODRIGO MEDIANISTA, CRISTAN A. ACOSTA, TERESITA D. SANTOS, ARCHEMEDIS SARMIENTO, JULIET M. DATUL, OLIVIA O. SALVADOR, GIRALINE P. BELLEZA, JULIUS N. ORTEGA, LORENZO C. ACOSTA, JOSEPH S. TRIBIANA, ANALAINE S. TRIBIANA, LORENA B. MUNAR, JUN JUN A. DAVAO, WILLIAM A. MANALO, PAZ I. VILLAR, PERCY M. CARAG, PATRONA R. ROXAS, PABLO P. RESPICIO, LINA M. VALENZUELA, NEDELYN D. CAJOTE, NOEL L. HERNANDEZ, NORMA MARTIN, MA. RODHORA UBANA, LINDA LACARA, NORMAN M. ILAC, MERCY O. RIVERA, JAIME LUMABAS, JULITA PAJARON, CELESTINO PEREZ, CONCHITA V. NAVALES, REYNALDO V. NAVALES, EDDIE V. VILLAREY, VIRGILIO V. ALEJANDRINO, MA. CECILIA P. CALVES, EVANGELINE M. MANALO, CONNIE D. BELZA, SONIA G. EVANGELISTA, JEANOR DELA CRUZ, MADELINE EVANGELISTA, CATHERINE ANTONIO, JAI D. HERNANDEZ, CYNTIA C. HERNANDEZ, JULIE H. DEPIEDRA, JENNIFER H. BESMONTE, RICHARD Z. DIZON, RICHARD H. DIZON, JR., REYNALDO C. HERNANDEZ, NOEL C. HERNANDEZ, AUGUSTA H. DE LEON, VICTORINO U. HERNANDEZ, MARVIN C. HERNANDEZ, LETICIA G. GALOPE, DANIEL P. MABANSAG, EDUARDO J. MALABRIGA, VANGIE S. NAVARRO, ANSARI P. DITUCALAN, DIOSA P. BAUTISTA, HALIL P. DITUCALAN, CAIRODEN D. PUNGINAGINA, CANDIDATO PUNGINAGINA, RAIKEN P. MACARAUB, JALIL MOKSIR, ISIAS MELCHOR, ROMULO NAVALES, RONALDO**

GUEVARRA, ANDREA R. DELOS REYES AND SHIELA R. DELOS REYES, *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ESSENTIAL ELEMENTS THEREOF.— Under the Rules of Court, "cause of action is the act or omission by which a party violates a right of another." Thus, a complaint states a cause of action if it sufficiently alleges the existence of three essential elements: (1) the plaintiff's legal right; (2) the defendant's correlative obligation; and (3) the act or omission of the defendant in violation of plaintiff's legal right. If there is no allegation that these elements concur, the complaint fails to state a cause of action, and thus, becomes dismissible.

. . .

Based on the allegations, and as aptly found by the lower courts, the Complaint sufficiently states a cause of action. All the elements are present, namely: (1) respondents owned the residential structures on Luzon Avenue, Quezon City, and they have rights embodied in the August 6, 2008 Memorandum of Agreement; (2) petitioner has the obligation to respect such rights as it still has to comply with due process; and (3) petitioner's inaction to give respondents what is due to them violates their rights.

2. ID.; ID.; ID.; ID.; FAILURE TO STATE A CAUSE OF ACTION DISTINGUISHED FROM LACK OF CAUSE OF ACTION. — While often interchanged, *failure to state a cause of action* and *lack of cause of action* are distinct grounds to dismiss an action. Failure to state a cause of action, on one hand, "refers to the insufficiency of allegations in the pleading," and is a ground for a motion to dismiss. On the other hand, lack of cause of action refers to a situation where the evidence does not prove the cause of action alleged in the pleading, or there is "insufficiency of the factual basis for the action."

Moreover, failure to state a cause of action "may be raised at the earliest stages" of an action, but lack of cause of action "may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions[,] or evidence presented[.]"

3. ID.; ID.; ID.; ID.; IN DETERMINING WHETHER A COMPLAINT STATES A CAUSE OF ACTION, THE INQUIRY IS GENERALLY CONFINED TO THE MATERIAL ALLEGATIONS IN THE COMPLAINT.— [I]n cases of dismissal for failure to state a cause of action, as in this case, "the inquiry is into the sufficiency, not the veracity, of the material allegations" in the complaint. It delves into "whether the material allegations, assuming these to be true, state ultimate facts which constitute plaintiff's cause of action[.]" The test for determining whether a complaint states a cause of action is "whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint."

. . .

Since the inquiry is into the sufficiency, not the veracity, of the material allegations in the complaint, then generally, the "analysis should be confined to the four corners of the complaint, and no other."

4. ID.; ID.; ID.; ID.; INSTANCES WHEN AN INQUIRY AS TO THE SUFFICIENCY OF A CAUSE OF ACTION MAY NOT BE CONFINED TO THE FACE OF THE COMPLAINT. — Although generally, inquiry is limited to the four corners of the complaint, inquiry may not be confined to the face of the complaint "if culled (a) from annexes and other pleadings submitted by the parties; (b) from documentary evidence admitted by stipulation which disclose facts sufficient to defeat the claim; or (c) from evidence admitted in the course of hearings related to the case."

5. ID.; ID.; ID.; ID.; AN OFFER OF FINANCIAL ASSISTANCE IS AN ACKNOWLEDGMENT OF VIOLATION OF ONE'S RIGHT.— In any case, when petitioner offered respondents financial assistance, respondents' right has already been acknowledged to have been violated. It is of no moment that petitioner denied respondents' entitlement to just compensation due to their being professional squatters. In *Aquino v. Quiazon*, if the allegations in a complaint furnish sufficient basis for the suit, the complaint should not be dismissed regardless of the defenses that may be raised.

6. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN OR EXPROPRIATION; REQUISITES THEREOF.— Article III, Section 9 of the Constitution mandates that "[p]rivate property shall not be taken for public use without just compensation." The State's inherent right to condemn private property is the power of eminent domain or expropriation, which must comply with the following requisites to be valid:

(1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property should be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

Expropriation may be judicially claimed by filing either: (a) a complaint for expropriation by the expropriator; or (b) a complaint, or a counterclaim, for compensation by the deprived landowner, which is referred to as inverse expropriation.

7. ID.; ID.; ID.; R.A. NO. 8974 (ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT PROJECTS AND OTHER PURPOSES); RA NO. 7279 (URBAN DEVELOPMENT AND HOUSING ACT OF 1992); INFORMAL SETTLERS MAY ONLY BE EVICTED OR THEIR HOUSES DEMOLISHED IN THE MANNER PROVIDED BY SUCH LAWS.— [R]espondents admit that they are informal settlers, not lot owners. They claim to be residents and owners of the residential structures on Luzon Avenue in Quezon City, along the path of the C-5 extension project. Thus, the source of respondents' rights in the Constitution is not Article III, Section 9, but rather, Article XIII, Section 10.

Article XIII, Section 10 of the Constitution provides:

> SECTION 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

In relation, Section 9 of Republic Act No. 8974, or An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location

for National Government Infrastructure Projects and for Other Purposes, states:

SECTION 9. *Squatter Relocation.* — . . .

In case the expropriated land is occupied by squatters, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992. . . .

Under Republic Act No. 8974, the court shall issue a writ of demolition to dismantle the structures found in the property. The implementing agency shall diligently observe the procedure provided in Sections 28 and 29 of Republic Act No. 7279, or the Urban Development and Housing Act of 1992, for when the expropriated land is occupied by informal settlers. . . .

Here, there is no allegation that a writ of demolition was procured from the court, or that the procedures provided in Sections 28 and 29 of Republic Act No. 7279 were observed, as mandated by Republic Act No. 8974. Instead, petitioner admits having offered financial assistance to respondents, pursuant to Section 28(8) of Republic Act No. 7279. By doing this, petitioner acknowledges that respondents are underprivileged and homeless citizens, entitled to due process of law, prior to their eviction and the demolition of their structures.

Thus, this case should be remanded to the trial court to determine whether respondents had been prejudiced by the eviction and demolition of their structures, and if properly substantiated, whether they are entitled to damages.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Evangelista Lopez Pefianco Sumalabe Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

The mandate of our Constitution is clear: "Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner."[1]

This Court resolves the Petition for Review on Certiorari[2] assailing the Decision[3] of the Court of Appeals, which affirmed the Regional Trial Court Order[4] denying the Department of Public Works and Highways' motion to dismiss a Complaint seeking just compensation for their properties.

Eddie Manalo, Rodrigo Medianista, Cristan A. Acosta, Teresita D. Santos, Archemedis Sarmiento, Juliet M. Datul, Olivia O. Salvador, Giraline P. Belleza, Julius N. Ortega, Lorenzo C. Acosta, Joseph S. Tribiana, Analaine S. Tribiana, Lorena B. Munar, Jun Jun A. Davao, William A. Manalo, Paz I. Villar, Percy M. Carag, Patrona R. Roxas, Pablo P. Respicio, Lina M. Valenzuela, Nedelyn D. Cajote, Noel L. Hernandez, Norma Martin, Ma. Rodhora Ubana, Linda Lacara, Norman M. Ilac, Mercy O. Rivera, Jaime Lumabas, Julita Pajaron, Celestino Perez, Conchita V. Navales, Reynaldo V. Navales, Eddie V. Villarey, Virgilio V. Alejandrino, Ma. Cecilia P. Calves, Evangeline M. Manalo, Connie D. Belza, Sonia G. Evangelista, Jeanor Dela Cruz, Madeline Evangelista, Catherine Antonio, Jai D. Hernandez, Cyntia C. Hernandez, Julie H. Depiedra, Jennifer H. Besmonte, Richard Z. Dizon, Richard H. Dizon,

---

[1] CONST., art. XIII, sec. 10.

[2] *Rollo*, pp. 9-25. Filed under Rule 45 of the Rules of Court.

[3] Id. at 27-40. The March 19, 2015 Decision in CA-G.R. SP No. 121303 was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rodil V. Zalameda (now a member of this Court) and Pedro B. Corales of the Thirteenth Division of the Court of Appeals, Manila.

[4] Id. at 66-67. The May 5, 2011 Order in Civil Case No. Q-10-67907 was penned by Presiding Judge Alexander S. Balut of the Regional Trial Court of Quezon City, Branch 76.

Jr., Reynaldo C. Hernandez, Noel C. Hernandez, Augusta H. De Leon, Victorino U. Hernandez, Marvin C. Hernandez, Leticia G. Galope, Daniel P. Mabansag, Eduardo J. Malabriga, Vangie S. Navarro, Ansari P. Ditucalan, Diosa P. Bautista, Halil P. Ditucalan, Cairoden D. Punginagina, Candidato Punginagina, Raiken P. Macaraub, Jalil Moksir, Isias Melchor, Romulo Navales, Ronaldo Guevarra, Andrea R. Delos Reyes, and Shiela R. Delos Reyes (collectively, Manalo, et al.) are owners of residential structures on a parcel of land on Luzon Avenue, Quezon City, owned by Metropolitan Waterworks and Sewerage System. This parcel of land is directly affected by the Department of Public Works and Highways' C-5 extension project,[5] an endeavor that would link the South Luzon Expressway and the North Luzon Expressway.[6]

On September 13, 2010, Manalo, et al. filed a Complaint before the Regional Trial Court of Quezon City, seeking the determination and payment of just compensation from the Department of Public Works and Highways.[7]

In their Complaint, Manalo, et al. alleged that despite its expropriation power, the Department of Public Works and Highways neglected to initiate an expropriation proceeding. They averred that the Department was "cutting corners to hasten the completion of the project."[8]

Moreover, Manalo, et al. claimed that while the Department of Public Works and Highways made a voluntary offer of financial assistance to them, the amount was "notoriously small"[9] that they had to turn down the offer.[10]

Manalo, et al. also asserted that they should be paid the replacement costs of their houses, as what happened with the

---

[5] Id. at 12.

[6] Id. at 30.

[7] Id. at 29.

[8] Id. at 30.

[9] Id. at 31.

[10] Id.

informal settlers of Barangay UP Campus.[11] Citing an August 6, 2008 Memorandum of Agreement, which the Department of Public Works and Highways had entered into with the Quezon City government, Manalo, et al. claimed that the parties had acknowledged that they were informal settlers.[12] The agreement states in part:

> WHEREAS, to implement these proposed projects, there is a need to relocate the affected squatters and to acquire the needed road right of way;
>
> . . . .
>
> ARTICLE II — RESPONSIBILITIES OF THE PARTIES
>
> 2.1 Acquire and clear at their own expense the needed Road Right-of-Way that will be affected by the approach of the Construction of Flyover Crossing [C]ommonwealth Avenue (Damayan Alley Side) and the [c]onstruction/widening of Luzon Avenue including the clearing and relocation of squatters/illegal shanties thereat.[13]

Thus, Manalo, et al. prayed for the determination of just compensation due to them, and that they be entitled to rights accruing to individuals whose properties were expropriated for public use, and to moral damages, exemplary damages, and attorney's fees.[14]

On November 15, 2010, the Quezon City Task Force Control and Prevention of Illegal Structures and Squatting issued a Notice of Demolition, asking Manalo, et al. to vacate the land and remove the structures within seven days of receiving the notice. This came with financial assistance worth ₱21,000.00 per family. Despite notice, Manalo, et al. refused to vacate the property and accept the financial aid.[15]

---

[11] Id. at 66.

[12] Id. at 66-67.

[13] Id.

[14] Id. at 32.

[15] Id. at 12.

On January 19, 2011, the Department of Public Works and Highways filed its Answer[16] praying that the Complaint be dismissed.[17] It alleged that Manalo, et al. were admittedly squatting on a government-owned property without the owner's express consent. As such, the structures they built may be demolished under Section 27 of Republic Act No. 7279.[18]

The Department of Public Works and Highways also noted that it had already offered Manalo, et al. cash compensation to show good faith and honest intention to help them. It likewise refuted their claim of entitlement to replacement costs, noting that they were only entitled to financial assistance under Section 28 of Republic Act No. 7279. It also asserted that expropriation was not the proper remedy, and that it may avail of summary eviction and demolition under Republic Act No. 7279.[19]

Finally, the Department of Public Works and Highways asserted that since Manalo, et al. admitted that the land was not their own, they were builders in bad faith who, under Article 449 of the Civil Code, had no right of reimbursement for the value of their structures.[20]

Hearings were conducted on the special and affirmative defenses interposed by the Department of Public Works and Highways on February 21, February 28, and March 7, 2011.[21]

In a May 5, 2011 Order,[22] the Regional Trial Court denied the Department of Public Works and Highways' prayer to dismiss Manalo, et al.'s case. This, after it had found that the allegations in the Complaint had a cause of action.[23] It disposed:

---

[16] Id. at 98-114.

[17] Id. at 110.

[18] Id. at 33-34.

[19] Id. at 34-35.

[20] Id. at 35.

[21] Id.

[22] Id. at 66-67.

[23] Id. at 67.

WHEREFORE, premises considered, the prayer for the dismissal of this case is denied.

SO ORDERED.[24] (Emphasis in the original)

The Department of Public Works and Highways sought reconsideration, but this was denied in the Regional Trial Court's June 30, 2011 Order.[25] Thus, it filed a Petition for Certiorari before the Court of Appeals.[26]

In its March 19, 2015 Decision,[27] the Court of Appeals affirmed the Regional Trial Court's findings. It held that the trial court did not gravely abuse its discretion when it relied on the Memorandum of Agreement in denying the prayer for the case's dismissal.[28] It disposed:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby **DISMISSED** for lack of merit. The assailed Orders of respondent Judge Alexander S. Balut of the Regional Trial Court of Quezon City are hereby **AFFIRMED**.

SO ORDERED.[29] (Emphasis in the original)

Thus, the Department of Public Works and Highways filed a Petition for Review on Certiorari[30] before this Court.

On July 5, 2016, respondents Manalo, et al. filed their Comment.[31] Petitioner then filed its Reply.[32]

Petitioner insists that respondents' Complaint failed to state a cause of action. It notes that the trial court should not have

---

[24] Id.

[25] Id. at 68.

[26] Id. at 28-29.

[27] Id. at 27-40.

[28] Id. at 38-39.

[29] Id. at 39.

[30] Id. at 9-25.

[31] Id. at 402-410.

[32] Id. at 431-439.

considered the Memorandum of Agreement because it "was never identified, marked in evidence[,] and formally offered during the hearing" for its motion to dismiss.[33] In any case, petitioner claims that the Memorandum of Agreement actually weakened respondents' case, because it revealed that the obligation to relocate respondents rested with the Quezon City government, not petitioner.[34]

Citing Republic Act No. 7279, petitioner maintains that respondents are only entitled to financial assistance and not just compensation equivalent to the replacement costs. It reasons that respondents were professional squatters who may be summarily evicted and whose illegal structures may be demolished. It reiterates that respondents were builders in bad faith who are not entitled to any reimbursement.[35]

On the other hand, respondents claim that their cause of action remains undeniable, as they owned the structures that petitioner demolished for the C-5 extension project. They also argue that the issue they raised was whether they were entitled to just compensation, over which the trial court had jurisdiction.[36] They also insist that they are entitled either to the payment of just compensation or to a suitable relocation.[37]

In rebuttal, petitioner merely reiterated the same arguments it had raised in its Petition.[38]

For this Court's resolution are the following issues:

First, whether or not the Court of Appeals erred in finding that the Regional Trial Court did not gravely abuse its discretion

---

[33] Id. at 15.

[34] Id. at 16.

[35] Id. at 18-19.

[36] Id. at 405.

[37] Id. at 404.

[38] Id. at 431-435.

in denying petitioner Department of Public Works and Highways' prayer to dismiss respondents Eddie Manalo, et al.'s Complaint;

Second, whether or not petitioner can extrajudicially and summarily evict respondents and demolish their structures; and

Finally, whether or not respondents are entitled to just compensation for their structures.

We deny the Petition.

I

Under the Rules of Court, "cause of action is the act or omission by which a party violates a right of another."[39] Thus, a complaint states a cause of action if it sufficiently alleges the existence of three essential elements: (1) the plaintiff's legal right; (2) the defendant's correlative obligation; and (3) the act or omission of the defendant in violation of plaintiff's legal right. If there is no allegation that these elements concur, the complaint fails to state a cause of action, and thus, becomes dismissible.[40]

While often interchanged, *failure to state a cause of action* and *lack of cause of action* are distinct grounds to dismiss an action. Failure to state a cause of action, on one hand, "refers to the insufficiency of allegations in the pleading,"[41] and is a ground for a motion to dismiss. On the other hand, lack of cause of action refers to a situation where the evidence does not prove the cause of action alleged in the pleading, or there is "insufficiency of the factual basis for the action."[42]

Moreover, failure to state a cause of action "may be raised at the earliest stages"[43] of an action, but lack of cause of action

---

[39] RULES OF COURT, Rule 2, sec. 2.

[40] *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171 (2014) [Per J. Perlas-Bernabe, First Division] and *Macaslang v. Zamora*, 664 Phil. 337 (2011) [Per J. Bersamin, Third Division].

[41] Id. at 177.

[42] Id.

[43] Id. at 177-178.

"may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions[,] or evidence presented[.]"[44]

In *Heirs of Pamaran v. Bank of Commerce*,[45] this Court held that the respondent's motion to dismiss by way of affirmative defense falls within the failure to state a cause of action as a ground for dismissal. This is because there had been no presentation of evidence yet, and the complaint sufficiently stated a cause of action. This Court further distinguished between failure to state a cause of action and lack of cause of action:

> [A] distinction must be made between a motion to dismiss for failure to state a cause of action under Section 1(g) of Rule 16, and the one under Rule 33 of the Rules of Court.
>
> In the first situation, the motion must be made before a responsive pleading is filed; and it can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, in the second instance, the motion to dismiss must be filed after the plaintiff rested his case; and it can be determined only on the basis of the evidence adduced by the plaintiff. In the first case, it is immaterial if the allegations in the complaint are true or false; however, in the second situation, the judge must determine the truth or falsity of the allegations based on the evidence presented.
>
> Stated differently, a motion to dismiss under Section 1(g) of Rule 16 is based on preliminary objections made before the trial while the motion to dismiss under Rule 33 is a demurrer to evidence on the ground of insufficiency of evidence, and is made only after the plaintiff rested his case.[46] (Citations omitted)

Thus, in cases of dismissal for failure to state a cause of action, as in this case, "the inquiry is into the sufficiency, not the veracity, of the material allegations"[47] in the complaint. It

---

[44] Id. at 178.

[45] 789 Phil. 42 (2016) [Per J. Del Castillo, Second Division].

[46] Id. at 50.

[47] *Dabuco v. Court of Appeals*, 379 Phil. 939, 949 (2000) [Per J. Kapunan, First Division].

delves into "whether the material allegations, assuming these to be true, state ultimate facts which constitute plaintiff's cause of action[.]"[48] The test for determining whether a complaint states a cause of action is "whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint."[49]

There are, however, exceptions to the rule that the allegations are hypothetically admitted as true, namely: (a) if the falsity of the allegations "is subject to judicial notice"; (b) "if such allegations are legally impossible"; or (c) "if these refer to facts which are inadmissible in evidence"; or (d) "if by the record or document included in the pleading these allegations appear unfounded."[50] None of these exceptions were alleged to be present here.

Since the inquiry is into the sufficiency, not the veracity, of the material allegations in the complaint, then generally, the "analysis should be confined to the four corners of the complaint, and no other."[51] Here, in moving to dismiss the case, petitioner alleged that respondents' Complaint failed to state a cause of action. Thus, an examination of the Complaint is necessary. Its pertinent portions read:

> 3. Plaintiffs who are informal settlers and not owners of the lots are residence [sic] and owners of residential structures located at Luzon Avenue, Quezon City, whose houses [were] situated directly along the path of DPWH's ambitious Circumferential Road also known as C-5 extension project that will finally link South Luzon Express way to North Luzon Express way [sic];

---

[48] Id.

[49] *China Road and Bridge Corp., v. Court of Appeals*, 401 Phil. 590, 599-600 (2000) [Per J. Bellosillo, Second Division].

[50] *Dabuco v. Court of Appeals*, 379 Phil. 939 (2000) [Per J. Kapunan, First Division].

[51] *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171, 180 (2014) [Per J. Perlas-Bernabe, First Division].

4. Obviously, the C-5 project was envisioned by traffic czars and engineers to alleviate and decongest nearly the whole stretch of main thoroughfares like EDSA and Camachile-Balintawak interchange, the bulk of vehicles are therefore diverted to C-5 with an accesses [sic] to both north and south super highways and vice-versa without negotiating the perennially traffic clogged metropolitan roads. It was a noble project indeed ultimately beneficial to the public particularly in the movement of people and goods;

5. It is beyond dispute that defendant DPWH an agency of the sovereign that has the sole and exclusive task, supervision and control of all government projects. The sovereign power is so immense and potent that it could take away any kind of property private of [sic] otherwise for public use. Although the State guarantees private ownership, such personal tenure will necessarily bowed [sic] down to sovereign's inherent power of eminent domain when the exercise of expropriate becomes indispensable to fulfill the government's avowed aim of serving the interest of the great majority of the people;

. . . .

"7. Surprisingly, defendant DPWH as an instrument of the sovereign has the expropriation power but neglected to appropriately initiate an expropriation proceeding in court through a verified complaint impleading the plaintiffs whose properties lie in the direct path of the developing super highway. Yet, defendant DPWH is already exercising and moving towards expropriation which seemed highly irregular considering that the Constitution and the Rules have provided a mechanism in expropriation. Apparently, defendant DPWH is cutting corners to hasten the completion of the project. Whatever the motive of defendant DPWH noble or otherwise should submit to judicial process to avoid any impression of irregularity and abuse;

8. Yet, defendant DPWH aware of its constitutional obligation to plaintiffs as owners of the residential structures has made a voluntary offer of financial aid package. But the amount offered by defendant DPWH to the affected plaintiffs whose houses and homes will soon to be gobbled up by the C-5 highway was notoriously small to pass the criteria of just compensation. Evidently, the idea of just compensation does not make any sense at all with the defendant DPWH since its voluntary offer was termed "financial assistance." Consequently, defendant DPWH's offer of financial assistance was graciously turned down by plaintiffs;

9. With the sovereign power in their midst slowly creeping towards plaintiffs' private homes and houses sans the property expropriation proceedings so demanded by the Constitution and the Rules, plaintiffs are frantically desperate to seek judicial remedy to prevent the threat or incursion by dependant [sic] DPWH into their respective homes and houses. Plaintiffs have no such means to match the sovereign power gradually sneaking into their private homes except through the invocation of judicial process;

. . . .

11. Plaintiffs are unable to understand the present policy of defendant DPWH of not imparting upon them its liberal and generous treatment it bestowed to members of SAPADA who like them were also informal settlers right across Commonwealth Avenue, where their houses and structures were duly compensated by defendant DPWH based on the houses' estimated values[.][52]

Based on the allegations, and as aptly found by the lower courts, the Complaint sufficiently states a cause of action. All the elements are present, namely: (1) respondents owned the residential structures on Luzon Avenue, Quezon City, and they have rights embodied in the August 6, 2008 Memorandum of Agreement; (2) petitioner has the obligation to respect such rights as it still has to comply with due process; and (3) petitioner's inaction to give respondents what is due to them violates their rights.[53]

Contrary to petitioner's contention that the Memorandum of Agreement may not be considered, this Court has held in *China Road and Bridge Corporation v. Court of Appeals*[54] that the trial court can consider all the pleadings filed, including annexes, motions, and the evidence on record, for purpose of hypothetically admitting them without ruling on their truth or falsity.

---

[52] *Rollo*, pp. 84-86.

[53] Id. at 38 and 66-67.

[54] 401 Phil. 590 (2000) [Per J. Bellosillo, Second Division].

Although generally, inquiry is limited to the four corners of the complaint, inquiry may not be confined to the face of the complaint "if culled (a) from annexes and other pleadings submitted by the parties; (b) from documentary evidence admitted by stipulation which disclose facts sufficient to defeat the claim; or (c) from evidence admitted in the course of hearings related to the case."[55]

In any case, when petitioner offered respondents financial assistance, respondents' right has already been acknowledged to have been violated. It is of no moment that petitioner denied respondents' entitlement to just compensation due to their being professional squatters. In *Aquino v. Quiazon*,[56] if the allegations in a complaint furnish sufficient basis for the suit, the complaint should not be dismissed regardless of the defenses that may be raised.

II

Judicial economy aims "to have cases prosecuted with the least cost to the parties,"[57] requiring that "unnecessary or frivolous reviews of orders by the trial court, which facilitate the resolution of the main merits of the case, be reviewed together with the main merits of the case."[58]

In the interest of judicial economy, this Court proceeds to determine the other issues raised by the parties.

---

[55] *Aquino v. Quiazon*, 755 Phil. 793, 814 (2015) [Per J. Mendoza, Second Division] citing *Philippine Army v. Pamittan*, 667 Phil. 440 (2011) [Per J. Carpio, Second Division]; and *Dabuco v. Court of Appeals*, 379 Phil. 939 (2000) [Per J. Kapunan, First Division].

[56] 755 Phil. 793 (2015) [Per J. Mendoza, Second Division].

[57] *E. I. Dupont De Nemours and Co. v. Francisco*, 794 Phil. 97, 113 (2016) [Per J. Leonen, Second Division] citing *City of Lapu-Lapu v. Philippine Economic Export Zone*, 748 Phil. 473 (2014) [Per J. Leonen, Second Division]; and *Salud v. Court of Appeals*, 303 Phil. 397 (1994) [Per J. Puno, Second Division].

[58] Id. at 113-114.

Article III, Section 9 of the Constitution mandates that "[p]rivate property shall not be taken for public use without just compensation." The State's inherent right to condemn private property is the power of eminent domain or expropriation, which must comply with the following requisites to be valid:

> (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.[59] (Citation omitted)

Expropriation may be judicially claimed by filing either: (a) a complaint for expropriation by the expropriator; or (b) a complaint, or a counterclaim, for compensation by the deprived landowner, which is referred to as inverse expropriation.[60]

Here, respondents admit that they are informal settlers, not lot owners. They claim to be residents and owners of the residential structures on Luzon Avenue in Quezon City, along the path of the C-5 extension project.[61] Thus, the source of respondents' rights in the Constitution is not Article III, Section 9, but rather, Article XIII, Section 10.

Article XIII, Section 10 of the Constitution provides:

> SECTION 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

---

[59] *Philippine Long Distance Telephone Company v. Citi Appliance M.C. Corporation*, G.R. No. 214546, October 9, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66296> [Per J. Leonen, Third Division].

[60] Id.

[61] *Rollo*, p. 30.

In relation, Section 9 of Republic Act No. 8974, or An Act to Facilitate the Acquisition of Right-Of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes, states:

> SECTION 9. *Squatter Relocation.* — The government through the National Housing Authority, in coordination with the local government units and implementing agencies concerned, shall establish and develop squatter relocation sites, including the provision of adequate utilities and services, in anticipation of squatters that have to be removed from the right-of-way or site of future infrastructure projects. Whenever applicable, the concerned local government units shall provide and administer the relocation sites.
>
> *In case the expropriated land is occupied by squatters, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992.*
>
> Funds for the relocation sites shall come from appropriations for the purpose under the General Appropriations Act, as well as from appropriate infrastructure projects funds of the implementing agency concerned. (Emphasis supplied)

Under Republic Act No. 8974, the court shall issue a writ of demolition to dismantle the structures found in the property. The implementing agency shall diligently observe the procedure provided in Sections 28 and 29 of Republic Act No. 7279, or the Urban Development and Housing Act of 1992, for when the expropriated land is occupied by informal settlers. The relevant provisions of Republic Act No. 7279 states:

> SECTION 27. *Action Against Professional Squatters and Squatting Syndicates.* — The local government units, in cooperation with the Philippine National Police, the Presidential Commission for the Urban Poor (PCUP), and the PCUP-accredited urban poor organization in the area, shall adopt measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates, as herein defined.

Any person or group identified as such shall be summarily evicted and their dwellings or structures demolished, and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

For purposes of this Act, professional squatters or members of squatting syndicates shall be imposed the penalty of six (6) years imprisonment or a fine of not less than Sixty thousand pesos (₱60,000.00) but not more than One hundred thousand pesos (₱100,000.00), or both, at the discretion of the court.

SECTION 28. *Eviction and Demolition.* — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;

(b) When government infrastructure projects with available funding are about to be implemented; or

(c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

(1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

(2) Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

(3) Presence of local government officials or their representatives during eviction or demolition;

(4) Proper identification of all persons taking part in the demolition;

(5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

(6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

(7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and

(8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving ***underprivileged and homeless citizens***, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, ***financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days*** shall be extended to the affected families by the local government unit concerned.

The Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.

SECTION 29. *Resettlement.* — Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places as sidewalks, roads, parks, and playgrounds. The local government unit, in coordination with the National Housing

Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of the affected families.[62] (Emphasis supplied)

Here, there is no allegation that a writ of demolition was procured from the court, or that the procedures provided in Sections 28 and 29 of Republic Act No. 7279 were observed, as mandated by Republic Act No. 8974. Instead, petitioner admits having offered financial assistance to respondents, pursuant to Section 28 (8) of Republic Act No. 7279. By doing this, petitioner acknowledges that respondents are underprivileged and homeless citizens, entitled to due process of law, prior to their eviction and the demolition of their structures.

Thus, this case should be remanded to the trial court to determine whether respondents had been prejudiced by the eviction and demolition of their structures, and if properly substantiated, whether they are entitled to damages.

Petitioner, however, insists that respondents are professional squatters who may be summarily evicted and their structures demolished under Section 27 of Republic Act No. 7279. Section 3 (m) of the law defines professional squatters as:

. . . individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing. The term shall also apply to persons who have previously been awarded homelots or housing units by the Government but who sold, leased or transferred the same to settle illegally in the same place or in another urban area, and non-bona fide occupants and intruders of lands reserved for socialized housing. The term shall not apply to individuals or groups who simply rent land and housing from professional squatters or squatting syndicates[.]

Petitioner, however, failed to substantiate this allegation.

Finally, this Court notes that the Metropolitan Waterworks and Sewerage System, the owner of the land on which

---

[62] Republic Act No. 7279 (1992), secs. 27, 28, and 29.

respondents' structures were built, was not impleaded here. Hence, this Court cannot rule on the issue of respondents' rights as builders in bad faith under the Civil Code.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' March 19, 2015 Decision in CA-G.R. SP No. 121303 is **AFFIRMED**. This case is **REMANDED** to the Regional Trial Court of Quezon City, Branch 76 for appropriate action in accordance with this Decision, with due and deliberate dispatch.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 221602. November 16, 2020]

RICARDO ALBOTRA, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. CRIMINAL LAW; THEFT, ELEMENTS THEREOF.— "The essential elements of Theft are: (1) taking of personal property; (2) the property taken belongs to another; (3) the taking was done without the owner's consent; (4) there was intent to gain; and (5) the taking was done without violence against or intimidation of the person or force upon things."

In this case, the prosecution satisfactorily proved that Albotra took the bag belonging to Ramos without the latter's consent and with intent to gain. The taking was done without the use of violence against or intimidation of persons or force upon things, thereby removing the act from the coverage of the crime of Robbery.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS ON THE CREDIBILITY OF WITNESSES ARE GENERALLY ENTITLED TO GREAT WEIGHT AND RESPECT ON APPEAL DUE TO ITS UNIQUE POSITION TO OBSERVE THE WITNESSES' DEMEANOR WHILE TESTIFYING.— We uphold the findings of the trial court that the testimonies of the prosecution witnesses are credible. "It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have materially affected the outcome of the case." Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment and demeanor on the stand while testifying. Where the trial court's findings have been affirmed by the appellate court, as in this case, these are generally binding and conclusive upon the Court.

In this case, both the trial court and the appellate court found that Ramos convincingly testified that he saw Albotra enter Diego's house, grab his bag, and hurriedly leave with said bag. Moreover, Diego and Mercado, both of whom had witnessed the incident, corroborated Ramos' testimony. They both positively identified Albotra as the person who unceremoniously took the bag. The Court is convinced that there was unlawful taking of personal property. The Court finds no reason to doubt the findings of both the RTC and CA, especially since no evidence was presented to show that Ramos had any ill motive to falsely charge Albotra with the crime of Theft.

3. ID.; ID.; ID.; THE CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN EITNESSES' TESTIMONIES; IS NOT IMPAIRED BY THEIR INCONSISTENCIES AND CONTRADICTIONS WHICH DO NOT RELATE TO THE ESSENTIAL ELEMENTS OF THE CRIME.— [T]he alleged inconsistencies and contradictions in the testimonies of the prosecution witnesses do not relate to the essential elements of the crime of Theft but only to minor and inconsequential details. . . .

In this case, the alleged inconsistencies in the testimonies pertained to the ownership of the stolen bag, the location of the same when it was taken, the intricacies of the confrontation between Albotra and Ramos, all of which are minor details that have no bearing on the elements of the crime.

4. CRIMINAL LAW; THEFT; INTENT TO GAIN; REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; BEING AN INTERNAL ACT, THE ELEMENT OF INTENT TO GAIN IS PRESUMED FROM THE UNLAWFUL TAKING.— Albotra's contention that the prosecution failed to establish the element of intent to gain in the taking of the bag is without merit. Since intent to gain is an internal act, it is presumed from the unlawful taking of the bag in question.

APPEARANCES OF COUNSEL

Harold C. Abear for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

Petitioner Ricardo Albotra (Albotra) assails the February 28, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR No. 00804 and its subsequent October 5, 2015 Resolution[2] which affirmed the April 24, 2007 Decision[3] of the Regional Trial Court (RTC), Branch 39 of Sogod, Southern Leyte finding him guilty beyond reasonable doubt of the crime of Theft.

Albotra was charged with the crime of Robbery in an Information[4] which alleges:

> The undersigned Ombudsman Investigator, Office of the Deputy Ombudsman for the Military, accuses SPO1 RICARDO ALBOTRA of ROBBERY (Violation of Art. 294 of the Revised Penal Code), committed as follows:
>
> That on or about June 22, 2000, in Sogod, Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused SPO1 RICARDO ALBOTRA, a public officer, being then a member of the Philippine National Police, with intent to gain and by means of violence upon Delfin Ramos, did then and there, willfully, unlawfully and feloniously, take, rob, divest and carry away a bag owned by said Delfin Ramos containing a sum of money in the amount of Four Thousand Pesos (₱4,000.00), Philippine Currency, belonging to Ricardo Olita to the damage and prejudice of the offended parties.
>
> CONTRARY TO LAW.[5]

---

[1] CA *rollo*, pp. 115-132; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Myra V. Garcia-Fernandez and Abraham B. Borreta.

[2] Id. at 161-163; penned by Associate Justice Edgardo L. Delos Santos (now a member of this Court) and concurred in by Associate Justices Pamella Ann Abella Maxino and Edward B. Contreras.

[3] Records, pp. 395-409; penned by Judge Rolando M. Gonzalez.

[4] Id. at pp. 1-2.

[5] Id. at 1.

Albotra filed a Motion to Quash[6] but it was denied by the RTC.[7] During his arraignment, Albotra pleaded not guilty to the crime charged.[8]

Version of the Prosecution:

The prosecution presented the testimonies of Delfin Ramos (Ramos), Ricardo Olita (Olita), and Roberto Mercado (Mercado).[9] The prosecution's evidence is summarized as follows:

On June 22, 2000, at around 6:00 a.m., Olita gave Ramos ₱4,000.00 cash to buy motorcycle parts. Ramos placed the money inside his black bag together with one pair of pants and a shirt. He then proceeded to Sogod, Southern Leyte.[10]

Upon his arrival in Sogod, Southern Leyte at about 8:00 a.m., Ramos dropped by the store of Diego de los Santos (Diego), who invited him inside his house for coffee. Upon entering the house, Ramos placed his bag on top of the washing machine near the kitchen door. Shortly thereafter, while Diego, Ramos, and Mercado were having coffee, Albotra entered the house and grabbed the bag of Ramos which contained the ₱4,000.00 cash and other personal items. Ramos immediately stood up and attempted to retrieve his bag but Albotra was already gone with the bag.[11]

Diego and Mercado corroborated Ramos' testimony during trial.[12]

On September 13, 2000, Ramos and Olita filed a complaint for Robbery against Albotra before the Office of the Deputy Ombudsman for the Military.[13]

---

[6] Id. at 45.

[7] Id. at 51-52.

[8] Id. at 53.

[9] CA *rollo*, p. 117.

[10] Id. at 116-117.

[11] Id. at 118.

[12] Id.

Version of the Defense:

The defense presented the testimonies of Police Chief Superintendent Miguel Buron (PCS Buron) and Albotra himself.[14] The defense's evidence is summarized as follows:

Albotra was a member of the Philippine National Police assigned at the Southern Leyte Provincial Office. On June 22, 2000, at about 6:00 a.m., he was in Barangay Zone 5, Sogod, Southern Leyte conducting an anti-illegal gambling campaign against a certain Quintin, an alleged distributor of *masiao* tips. Albotra saw Quintin divide the alleged *masiao* tips for distribution by Diego. A certain financier, Alex Lim, knew Diego as a general coordinator of *masiao* tips. After sensing the presence of Albotra, Quintin left his bag and ran inside Diego's house. Albotra tried to pursue Quintin but Diego did not allow him to enter the house despite identifying himself as a police officer. Albotra then called the Chief of Police who instructed him to bring the bag to the police station and to have the incident duly recorded.[15]

Upon opening the bag at the police station, they found *masiao* tips and a list of names of persons to whom the tips were to be distributed. Thereafter, the incident was recorded in a police report. The Illegal Gambling case that was later filed before the Municipal Circuit Trial Court of Sogod was dismissed however.[16]

Albotra testified that he turned over the bag which contained the *masiao* tips to the Sogod Police Station. He claimed that the bag was not presented in court because it can no longer be located by the evidence custodian.[17]

---

[13] Id.

[14] Id. at 119.

[15] Id.

[16] Id. at 119-120.

[17] *Rollo*, p. 125.

Ruling of the Regional Trial Court:

On April 24, 2007, the RTC found Albotra guilty for the crime of Theft instead of Robbery since the element of violence against or intimidation of persons was absent. The trial court held that since the crime of Theft is necessarily included in the crime of Robbery, Albotra can be convicted of the former notwithstanding that he was charged with the latter offense.[18]

The dispositive portion of the Decision reads:

> WHEREFORE, finding the accused SPO1 RICARDO ALBOTRA GUILTY beyond reasonable doubt of the crime of Theft (Snatching) as proven and not the crime of Robbery as alleged in the information, judgment is hereby rendered:
>
> 1. Sentencing him to an indeterminate penalty of three (3) months of arresto mayor as minimum to two (2) years, eleven (11) months and ten (10) days of prision correccional as maximum;
>
> 2. Ordering him to pay the offended party Ricardo Olita the amount of Php4,000.00 which is the value of the money stolen, and to pay the costs of the suit.
>
> SO ORDERED.[19]

On September 1, 2007, Albotra filed a Motion for New Trial[20] but it was denied by the RTC in its November 26, 2007 Resolution.[21]

Thereafter, Albotra filed a Notice of Appeal[22] which was given due course by the trial court.

Ruling of the Court of Appeals:

In its February 28, 2012 Decision, the appellate court affirmed the judgment of conviction for Theft by the RTC and dismissed Albotra's appeal, as follows:

---

[18] Records, p. 408.

[19] *Id*. at 409.

[20] *Id*. at 410-412.

[21] *Id*. at 423-424.

[22] *Id*. at 425.

WHEREFORE, the appeal is DISMISSED. The Decision dated 24 April 2007 of Regional Trial Court, Branch 39, Sogod, Southern Leyte, in Criminal Case No. R-238, is AFFIRMED.

SO ORDERED.[23]

Dissatisfied with the CA's Decision, Albotra filed this Petition.

Issue

Whether or not Albotra is guilty of Theft.

Albotra argues that both the trial court and the appellate court committed serious error in the evaluation and appreciation of the evidence against him. He claims that the RTC disregarded the declaration of falsehood and contradictory statements made by the prosecution witnesses. Albotra insists that the testimonies of the prosecution witnesses lack credibility. He also claims that the courts below erroneously disregarded the absence of the elements of intent to gain and unlawful taking considering that he only followed the orders of his superior to bring the bag into custody. In fine, Albotra argues that the RTC and the CA committed grave error in finding him guilty beyond reasonable doubt of the crime of Theft.[24]

Our Ruling

After a careful review of the records of the case, the Court finds the petition unmeritorious there being no compelling reason to reverse the CA's Decision which affirmed the RTC's judgment of conviction of Albotra for the crime of Theft. Both the RTC and the CA correctly found that all the elements of the crime of Theft had been sufficiently established by the prosecution.

Article 308 of the Revised Penal Code (RPC) provides:

ARTICLE 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

---

[23] CA *rollo*, p. 131.

[24] *Rollo*, pp. 24-48.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

"The essential elements of Theft are: (1) taking of personal property; (2) the property taken belongs to another; (3) the taking was done without the owner's consent; (4) there was intent to gain; and (5) the taking was done without violence against or intimidation of the person or force upon things."[25]

In this case, the prosecution satisfactorily proved that Albotra took the bag belonging to Ramos without the latter's consent and with intent to gain. The taking was done without the use of violence against or intimidation of persons or force upon things, thereby removing the act from the coverage of the crime of Robbery.

We uphold the findings of the trial court that the testimonies of the prosecution witnesses are credible. "It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have materially affected the outcome of the case."[26] Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment

---

[25] *Ligtas v. People*, 766 Phil. 750, 782-783 (2015).

[26] *People v. Avelino, Jr.*, G.R. No. 231358, July 8, 2019.

and demeanor on the stand while testifying. Where the trial court's findings have been affirmed by the appellate court, as in this case, these are generally binding and conclusive upon the Court.

In this case, both the trial court and the appellate court found that Ramos convincingly testified that he saw Albotra enter Diego's house, grab his bag, and hurriedly leave with said bag.[27] Moreover, Diego and Mercado, both of whom had witnessed the incident, corroborated Ramos' testimony. They both positively identified Albotra as the person who unceremoniously took the bag. The Court is convinced that there was unlawful taking of personal property. The Court finds no reason to doubt the findings of both the RTC and CA, especially since no evidence was presented to show that Ramos had any ill motive to falsely charge Albotra with the crime of Theft.

The trial court correctly held that the alleged police operation against Illegal Gambling was not satisfactorily established and could not stand against the prosecution's evidence. We quote herein the pertinent ruling of the trial court:

> The defense failed to present the bag containing the alleged masiao tips as well as the records of the complaint against John Doe which are the *corpus delicti* in the alleged apprehension of one Quintin.
>
> Whatever excuses had been asserted for their [non-presentation], the same cannot be countenanced by this court considering that under the rules it will only admit evidence that has been formally offered.
>
> x x x x
>
> Thus, this alleged incident being concocted by Albotra is entirely dichotomous or different from the complaint for Robbery filed against him and could not stand on the same footing with the other incident which is this instant case.
>
> Therefore, it was incumbent upon him to refute the facts and circumstances related by Delfin Ramos and his witnesses and not to detract from them by making a different story of his own, which is

[27] CA *rollo*, p. 129.

quite weak not having been corroborated by credible evidence in support of the same.[28]

We also agree with the ratiocination of the appellate court, *viz.*:

> There is a presumption of regular performance of official duty only when there is nothing on record that would arouse suspicions of irregularity.
>
> In this case, the acts of accused-appellant were proved irregular. Hence, the legal presumption of regularity in the performance of official duty does not lie. Accused-appellant testified: on the date in question, he caught Quintin counting and distributing masiao tips; he was able to get the bag containing masiao tips from Quintin, but the latter was able to escape; he turned over the bag containing masiao tips and the list of names to the Sogod Police Station on 22 June 2000 at 6:30 a.m.; he filed a case for illegal gambling against an unidentified person but the same was dismissed.
>
> While accused-appellant claims [that] he filed a case for illegal gambling against a person but the same was dismissed, no proof (aside from his self-serving testimony) was adduced in this regard. Moreover, accused-appellant did not produce the bag and masiao tips he allegedly confiscated from Quintin, which are the *corpus delicti* of the crime committed by Quintin.[29]

Moreover, the alleged inconsistencies and contradictions in the testimonies of the prosecution witnesses do not relate to the essential elements of the crime of Theft but only to minor and inconsequential details. In *People v. Chan*,[30] we have previously held that:

> Discrepancies or inconsistencies in the testimonies of the witnesses pertaining to minor details, not touching upon the central fact of the crime, do not impair the credibility of the witnesses; on the contrary, they even tend to strengthen the credibility of the witnesses since they discount the possibility of witnesses being rehearsed.

---

[28] Records, p. 404.

[29] CA *rollo*, pp. 129-130.

[30] G.R. No. 226836, December 5, 2018.

In this case, the alleged inconsistencies in the testimonies pertained to the ownership of the stolen bag, the location of the same when it was taken, the intricacies of the confrontation between Albotra and Ramos, all of which are minor details that have no bearing on the elements of the crime. As to the contention regarding the amount stolen which concededly has a bearing on the penalty to be imposed, we find no reason to deviate from the findings of both the trial court and the appellate court that Ramos lost ₱4,000.00.

Finally, Albotra's contention that the prosecution failed to establish the element of intent to gain in the taking of the bag is without merit. Since intent to gain is an internal act, it is presumed from the unlawful taking of the bag in question.

All told, based on the evidence on record, the Court affirms the Decision of the appellate court that sustained Albotra's conviction for Theft. However, with the advent of Republic Act No. 10951,[31] there is a need to modify the penalty imposed. As amended, Article 309, Paragraph (5), now reads:

> Art. 309. *Penalties*. — Any person guilty of theft shall be punished by:
>
> x x x x
>
> 5. *Arresto mayor* to its full extent, if such value is over Five hundred pesos (₱500.00) but does not exceed Five thousand pesos (₱5,000.00).

Since the amount proved to be stolen was ₱4,000.00, Albotra should be accordingly sentenced to suffer the penalty of four months of *arresto mayor*. Moreover, he should pay interest at the rate of six percent (6%) per *annum* on the amount due from date of finality of this Decision until full payment.

---

[31] An Act Adjusting the Amount or the Value of the Property and Damage on which the Penalty is Based, and the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, otherwise known as the "Revised Penal Code," as amended. Approved: August 29, 2017.

WHEREFORE, the Petition is **DENIED**. The February 28, 2012 Decision and the October 5, 2015 Resolution of the Court of Appeals in CA-G.R. CEB CR No. 00804 are **AFFIRMED with MODIFICATION** that petitioner Ricardo Albotra is sentenced to suffer the penalty of four (4) months of *arresto mayor* and to return the amount of ₱4,000.00 with legal interest of six percent (6%) per *annum* from date of finality of this Decision until fully paid.

SO ORDERED.

Leonen (*Chairperson*), *Carandang,*[*] *Lopez,*[*] and *Rosario, JJ.*, concur.

---

[*] Designated as additional members per raffle dated November 11, 2020 vice *J.* Inting who recused due to the participation of *J.* Socorro B. Inting in the Court of Appeals, and *J.* Delos Santos who recused in view of having penned the assailed Decision of the Court of Appeals, respectively.

SECOND DIVISION

[G.R. Nos. 222369 and 222502. November 16, 2020]

STRONG FORT WAREHOUSING CORPORATION, *Petitioner, v.* **REMEDIOS T. BANTA,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXPUNGED EVIDENCE; EVIDENCE THAT IS ORDERED EXPUNGED FROM THE RECORDS HAS NO PROBATIVE VALUE.— Evidence that is ordered expunged from the records cannot be considered in favor of, and against a party for any purpose. To expunge means to strike out, obliterate, or mark for deletion. In all respects, an expunged evidence does not exist in the records and, therefore, has no probative value. Here, it is undisputed that the QDR issued by the NBI, and the PNP Crime Laboratory Report were expunged from the records by virtue of this Court's final and executory Resolution dated August 20, 2008. Though admitted in evidence, these expunged documents were not the bases of the trial court in concluding that Remedios' signature was forged.

2. ID.; ID.; BURDEN OF PROOF; FORGERY; FORGERY MUST BE PROVED BY THE PARTY ALLEGING IT; THE DENIAL BY A PARTY WHO ALLEGEDLY SIGNED A QUESTIONED DOCUMENT HAS PROBATIVE VALUE. — Forgery must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. . . .

Remedios herself denied signing the 1995 REM and its 1997 amendment, and the 2000 REM. Her disavowal of her signatures on the questioned documents has probative value, and thus, may be admitted in evidence.

3. ID.; ID.; ID.; ID.; RULES ON ADMISSIBILITY; OPINION RULE; EXPERT OPINION; THE OPINIONS OF

HANDWRITTING EXPERTS, ALBEIT NOT INDISPENSABLE, ARE USEFUL AND MAY SERVE AS ADDITIONAL EVIDENCE TO BUTTRESS THE CLAIM OF FORGERY.— While it is settled that resort to handwriting experts is not indispensable in the finding of forgery, their opinions are useful and may serve as additional evidence to buttress the claim of forgery. Owing to their special knowledge and trainings, they can help determine fundamental, significant differences in writing characteristics between the questioned and the standard or sample specimen signatures, as well as the movement and manner of execution strokes. In this case, the handwriting experts testified based on the documents and signature examination which they performed to analyze the possibility of forgery. They personally scrutinized and compared Remedios' disputed signatures in the subject documents with her authentic sample signatures. The handwriting experts detailed the glaring and material significant differences between Remedios' genuine signatures and those appearing in the questioned documents. To be sure, their testimonies are not hearsay, nor rendered baseless by the fact that the QDR and the PNP Crime Laboratory Report were expunged from the records. Their opinions as expert witnesses can stand on their own and do not depend on the QDR and the PNP Crime Laboratory Report for their competence and probative value. Verily, the forgery was established by evidence, other than the QDR and the PNP Crime Laboratory Report.

4. ID.; ID.; ID.; INSTANCES WHERE ADDITIONAL EVIDENCE MAY BE ALLOWED DURING THE REBUTTAL STAGE; A PLAINTIFF IS BOUND TO INTRODUCE ALL EVIDENCE THAT SUPPORTS THE CASE DURING THE PRESENTATION OF EVIDENCE IN CHIEF BEFORE THE CLOSE OF THE PROOF, AND MAY NOT ADD TO IT BY THE DEVICE OF REBUTTAL.— Anent the admission in evidence of the BPI checks and various promissory notes during the rebuttal stage, we agree with Strong Fort that the same is not justified. Section 5, Rule 30 of the Rules of Court provides that the parties may respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case. Thus, a plaintiff is bound to introduce all evidence that supports his case during the presentation of

his evidence in chief before the close of the proof, and may not add to it by the device of rebuttal. In *Lopez v. Liboro*, we provided the circumstances in which additional evidence may be allowed at the rebuttal stage, to wit: a) when it is newly discovered; b) where it has been omitted through inadvertence or mistake; or c) where the purpose of the evidence is to correct evidence previously offered.

Here, Remedios failed to justify the presentation of the promissory notes and the BPI checks containing her forged and genuine signatures as rebuttal evidence.

5. ID.; ID.; ID.; ID.; ID.; THE TRIAL COURT'S ERROR IN ALLOWING EVIDENCE ON REBUTTAL CANNOT BE RAISED FOR THE FIRST TIME ONLY IN A PETITION FOR REVIEW FILED BEFORE THE SUPREME COURT.— To note, these documents constitute direct proof of forgery, which is the main issue of the case, hence, these should have been presented as evidence in chief. It was thus, an error on the part of the trial court to allow these evidence on rebuttal. Nevertheless, it does not appear from the records that Westmont Bank raised this issue on their appeal to the CA. It was raised for the first time only in this petition for review. It is settled that no question will be considered on appeal if it was not raised in the court below. Otherwise, the court will be forced to make a judgment that goes beyond the issues and will adjudicate something in which the court did not hear the parties.

6. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; REAL ESTATE MORTGAGE (REM); IT IS THE DUTY OF THE MORTGAGEE TO ASCERTAIN THE IDENTITY OF THE MORTGAGOR AND THE GENUINENESS OF THE LATTER'S SIGNATURE.— In arguing that Remedios is guilty of inexcusable negligence by failing to file an action for judicial separation of property to protect her interest, Strong Fort is apparently shifting the blame on Remedios. To be sure, there is no law imposing an obligation upon Remedios to file an action in court to protect her interest in the conjugal properties because her interest is already protected and reserved for her by law as a conjugal partner. On the contrary, it is Westmont Bank that failed to observe the required level of caution in ascertaining the identity of the mortgagor and the genuineness of her signature. We note that the bank approved the REMs without conducting

a credit investigation on Remedios. It did not also take steps to ascertain if the woman introduced by Antonio as his wife was actually Remedios. Accordingly, Westmont Bank must bear the consequences of its negligence.

7. ID.; ID.; ID.; ID.; FAMILY CODE; CONJUGAL PROPERTIES; MORTGAGES CONSTITUTED WITH RESPECT TO THE CONJUGAL PROPERTIES; ANY DISPOSITION OR ENCUMBRANCE OF A CONJUGAL PROPERTY BY ONE SPOUSE WHICH IS NOT CONSENTED TO BY THE OTHER IS VOID.— Antonio and Remedios were married on April 5, 1975, or before the Family Code took effect in 1988. Hence, the applicable law is the Civil Code of the Philippines. Article (Art.) 160 of the Civil Code provides that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." The subject deeds of mortgage were executed in various years beginning 1995, or after the effectivity of the Family Code. Any alienation or encumbrance of conjugal property made during the effectivity of the Family Code is governed by Art. 124, . . .

Any disposition or encumbrance of a conjugal property by one spouse must be consented to, by the other; otherwise, it is void.

8. ID.; ID.; ID.; ID.; ID.; ID.; ID.; MORTGAGE CONSTITUTED BY A SPOUSE ON HIS/HER PORTION OF THE CONJUGAL ASSETS IS VOID, AS THE RIGHT TO ONE-HALF THEREOF DOES NOT VEST UNTIL THE LIQUIDATION OF THE CONJUGAL PARTNERSHIP.— Prior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into a title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of each spouse is limited to the net remainder resulting from the liquidation of the affairs of the partnership after its dissolution. "Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets

left which can be divided between the spouses or their respective heirs." Consequently, even on the assumption that Antonio mortgaged only his portion of the conjugal partnership, the mortgage is still theoretically void because his right to one-half of the conjugal assets does not vest until the liquidation of the conjugal partnership. Notably, when Antonio executed the assailed deeds of mortgage in 1995, 1997, and 2000, his marriage with Remedios was still existing and the conjugal partnership was not yet dissolved. As such, it could not be determined yet which of the conjugal assets belong to Antonio that he can validly mortgage.

9. ID.; ID.; ID.; LOAN; THE NULLITY OF A MORTGAGE AS A MERE ACCESSORY AGREEMENT DOES NOT INVALIDATE THE PRINCIPAL CONTRACT OF LOAN. — The nullity of the 1995 Real Estate Mortgage (REM) and its 1997 amendment, and the 2000 REM, notwithstanding, does not invalidate the loan as embodied in the promissory notes executed by Antonio. A mortgage is merely an accessory agreement and does not affect the principal contract of loan. The mortgages, while void, can still be considered as instruments evidencing the indebtedness. . . .

Being merely accessory contracts, the nullity of the subject deeds of real estate mortgage on account of the forged signature of Remedios, does not result in the invalidation of the loan obligation of Antonio.

APPEARANCES OF COUNSEL

Villanueva Caña & Associates for petitioner.
Karaan and Karaan Law Office for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

The validity of real estate mortgage contracts is the core issue in this Petition for Review on *Certiorari*[1] assailing the

[1] *Rollo,* pp. 57-107.

Court of Appeals' (CA) Decision[2] dated May 25, 2015 in CA-G.R. CV Nos. 99511 and 100241.

ANTECEDENTS

Antonio Banta (Antonio), married to Remedios Banta (Remedios), formed Metro Isuzu Corporation (MIC) and obtained series of loans from Westmont Bank in the name of MIC. The loans were evidenced by several promissory notes signed by Antonio and Remedios. On November 23, 1995, Antonio executed a deed of Real Estate Mortgage (REM),[3] covering several of their conjugal properties, to secure a loan of ₱25 million from Westmont Bank. On February 6, 1997, Antonio and Westmont Bank amended the REM to increase the loan to ₱36 million.[4]

On October 27, 1998, Remedios filed a complaint with the Regional Trial Court (RTC) of Malabon City, docketed as *Civil Case No. 2907-MN*, to nullify the REM and the amendment to the REM, including the various promissory notes and credit agreements that were executed by Antonio and Westmont Bank. Remedios alleged that her signatures on the loan documents were forged. She did not sign these documents as she and Antonio had been separated since 1991. As proof of the forgery, she submitted Questioned Documents Report No. 519-798 dated August 13, 1998 (QDR), issued by the National Bureau of Investigation (NBI), and the PNP Crime Laboratory Document Examination Report No. 131-98 dated August 20, 1998 (PNP Crime Laboratory Report), stating that the questioned signatures on the documents and standard signatures of Remedios "as not having been written or signed by one and the same person."[5]

---

[2] Id. at 136-163; penned by Associate Justice Pedro B. Corales, with the concurrence of Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of this Court).

[3] *Id*. at 231-233.

[4] *Id*. at 121.

[5] *Id*. at 122.

In its answer to the complaint, Westmont Bank invoked the principle of mortgagee in good faith and insisted that the loan documents are genuine.[6]

At the trial, and after presenting her witnesses on August 1, 2003, Remedios requested for 15 days to file her formal offer of documentary evidence. The request was followed by numerous motions for postponement by Remedios that dragged the case for 3 years, until she finally filed her Consolidated Formal Offer of Evidence[7] on July 19, 2006. Westmont Bank moved to expunge the formal offer because of the unreasonable delay in its submission, but the trial court denied the motion. Westmont Bank assailed the denial of the motion with the CA. In a Decision dated February 29, 2008.[8] The CA ordered that the formal offer of evidence of Remedios be expunged from the records, thus:

> At this point, it is all too obvious that the flood waters and the renovation are mere lame excuses which cannot justify the overlong and unreasonable delay in the filing of private respondent's formal offer of evidence. The time frame and event being referred to in the Order denying petitioner's motion to expunge is way too far from the time private respondent started to seek postponements from 1 August 2003 because her documents were allegedly still with the NBI for examination and she claimed that she was about to submit a proposal for amicable settlement which never came about. As glaring as the dilatory antics of private respondents were as they are likewise deplorable, public respondent never took charge over the proceedings and instead quietly gave his complicity to private respondent's utter disregard of court orders and set deadlines. This behavior of private respondent cannot receive a similar approval from this Court.
>
> x x x x
>
> While litigations should as much as possible be decided on the merits and not on technicalities, a litigant who has exhibited downright

---

[6] *Id.* at 140.

[7] *Id.* at 207-219.

[8] *Id.* at 110-119; penned by Associate Justice Josefina Guevara-Salonga, with the concurrence of Associate Justices Vicente Q. Roxas and Ramon R. Garcia.

disregard, bordering on defiance and insolence, of the rules that make for an orderly proceeding will not be tolerated further in his mockery of the courts and even of his opponent's substantive rights.[9] x x x.

On petition for review on *certiorari* to this Court, we affirmed the CA Decision in Our August 20, 2008 Resolution.[10]

During the pendency of the petition with the CA and this Court, trial continued. Westmonk Bank presented its witnesses and formally offered its documentary evidence. On rebuttal, Remedios was recalled to the witness stand and identified various checks and receipts as proof of her genuine signature. She also presented the QDR issued by the NBI, and the PNP Crime Laboratory Report which were previously ordered expunged from the records, and submitted them anew in her formal offer of rebuttal evidence. Over Westmont Bank's objection, the trial court admitted Remedios' formal offer of rebuttal evidence.[11]

Meanwhile, Remedios filed another complaint before the same court, docketed as *Civil Case No. 4950-MN*, against Antonio and Westmont Bank to nullify the deed of real estate mortgage dated August 4, 2000, and various promissory notes in which Remedios appeared as a signatory. She similarly alleged that her signatures on the REM and the promissory notes were forged. After trial, on May 8, 2012, the trial court decided in favor of Remedios and ordered the nullification of the 2000 REM and the Continuing Surety Agreement executed by Antonio and Westmont Bank, and declared the promissory notes without legal effect on Remedios. Westmont Bank's motion for reconsideration was denied in the trial court's Order dated July 17, 2012.[12]

On August 31, 2012, the trial court rendered a Decision[13] in *Civil Case No. 2907-MN*, declaring the 1995 REM and the 1997

---

[9] *Id*. at 117-118.

[10] *Id*. at 64. The August 20, 2008 Resolution of this Court attained finality on January 15, 2009.

[11] *Id*. at 15.

[12] *Id*. at 19.

[13] *Id.* at 120-134; penned by Judge Celso R.L. Magsino, Jr.

amendment to the REM void, and the promissory notes without legal effect insofar as Remedios is concerned, thus:

> Having established the fact x x x that the purported signatures of plaintiff in the loan and mortgage documents were not those of plaintiff Remedios, it follows that the contracts of loan in favor of Metro Isuzu Corporation, and the mortgage contracts entered into as security for the payment thereof, do not have the consent of plaintiff Remedios. Hence, the loan contracts are invalid as against plaintiff Remedios, and defendant Bank cannot hold her personally liable for any of these loans.
>
> As a logical consequence, the second issue is likewise resolved in favor of plaintiff. The real estate mortgage constituted on the subject properties forming part of the conjugal partnership of gains case without the consent of plaintiff Remedios, as one of the registered owners and as spouse in all the transfer certificate of titles of these properties before liquidation and separation of properties in the annulment proceedings then pending before the court, is null and void.[14]

The trial court denied Westmont Bank's motion for reconsideration in its Order dated November 21, 2012. Westmont Bank appealed the trial court's August 31, 2012 Decision and November 21, 2012 Order in Civil Case No. 2907-MN; and the May 8, 2012 Decision and July 17, 2012 Order in Civil Case No. 4950-MN, to the CA. The appeals were docketed as CA-G.R. CV No. 100241 and CA-G.R. CV No. 99511, respectively. Pursuant to the CA's May 2, 2014 Resolution, the two appeals were consolidated. Onshore Strategic Assets, Inc. (Onshore) substituted Westmont Bank in both appeals. Meanwhile, Strong Fort Warehousing Corporation (Strong Fort) moved to be substituted for Onshore as appellant in CA-G.R. CV No. 100241.[15]

On May 25, 2015,[16] the CA rendered the assailed Decision, affirming the invalidity of the REM, as well as the promissory notes

---

[14] *Id*. at 126.

[15] *Id*. at 10.

[16] *Supra* note 2.

with respect to Remedios on account of her forged signature, and reducing the award of damages for being excessive, to wit:

> Remedios categorically denied having contracted any loan from Westmont Bank and disavowed the genuineness of her purported signatures on the 1995 REM and 1997 Amendment to the REM. In the case of *Dela Rama v. Papa*, the Supreme Court elucidated that there is no rule that automatically discounts the testimony of the alleged writer as to the genuineness or spuriousness of his own signature. The testimony of the very person whose signature is put in question has probative value, whether such testimony is offered to affirm or dispute the genuineness of his signature; it satisfies the requirement under Section 22 of Rule 132 of the Rules of Court on how the genuineness of handwriting must be proved. The evidentiary weight of such testimony wholly depends on its strength viewed in conjunction with the totality of evidence at hand.
>
> x x x x
>
> The expunction of the NBI's QDR and the PNP-CLDER does not mean that Remedios has no evidence at all to prove forgery. x x x. With more reason then, Remedios' testimony, which was clear and positive, taken together with Susan's admission that the Remedios who appeared before the RTC was not the same person who signed the 1995 REM and 1997 Amendment to the REM, may be sufficient to establish plaintiff-appellee's claim. Besides, x x x, Our own independent examination of the questioned signatures and Remedios' genuine signatures on her complaint and the signatures and Remedios' genuine signatures on her complaint and the various checks she issued sufficiently proved the falsity of her purported signatures on the 1995 REM and the 1997 Amendment to the REM. Therefore, the aforesaid mortgage documents are null and void because Remedios did not give her consent thereto.
>
> x x x x
>
> OSAI and SFWC's predecessor-in-interest, Westmont Bank, fell short of the required degree of diligence, prudence, and care in approving the 1995 REM, 1997 Amendment to the REM, and August 4, 2000 REM. Based on the records of the nullification of the 1995 REM and 1997 Amendment to the REM case, the bank approved the REMs without conducting a credit investigation on Remedios. Westmont Bank did not bother to ascertain if the woman introduced by Antonio as his wife was actually Remedios. Susan's allegation

that she asked for Remedios' drivers [*sic*] license is belied by the fact that only a CTC was indicated as proof of identity in the questioned REMs. It also appears from the tenor of Susan's testimony that the bank merely relied on Antonio's representation because at that time[,] he was a valued client.

x x x x

WHEREFORE, the appeals in CA-G.R. CV No. 100241 and CA-G.R. CV No. 99511 are **PARTIALLY GRANTED**. The August 31, 2012 Decision and November 21, 2012 Order of the Regional Trial Court, Branch 74, Malabon City in Civil Case No. 2907-MN as well as the May 8, 2012 Decision and July 17, 2012 Order in Civil Case No. 4950-MN are **AFFIRMED** with **MODIFICATIONS**. In both cases, the awards of moral and exemplary damages are reduced to ₱100,000.00 and ₱50,000.00[,] respectively. All other aspects of the assailed Decisions stand.

SO ORDERED.[17] (Citations omitted.)

Onshore and Strong Fort's motion for reconsideration was denied.[18] Hence, Strong Fort[19] filed the instant Petition for Review on *Certiorari*. Strong Fort contends that the CA erred in not reversing the trial court when it admitted Remedios' rebuttal evidence that had been expunged from the records, such as the NBI's QDR and the PNP Crime Laboratory Report. Corollarily, since the NBI's QDR and the PNP Crime Laboratory Report had been expunged, the opinions of handwriting experts, Arcadio Ramos and Florenda Negre regarding the said documents become mere hearsay and baseless. The admission in evidence of the BPI checks showing Remedios' sample signatures, and the various promissory notes containing her forged signatures

---

[17] *Supra* at 154-162.

[18] *Rollo*, pp. 37-39; Resolution dated January 20, 2016.

[19] *Supra* note 1. On March 9, 2016, this Court received Strong Fort's Manifestation (*rollo*, pp. 43-46), that Villaraza & Angcangco has entered its appearance as counsel for Onshore, in substitution of Villanueva Caña & Associates. This had been duly noted by the Court of Appeals in its August 22, 2014 Resolution (*rollo*, p. 48). The present petition was filed by Villanueva Caña & Associates on behalf of Strong Fort only.

during the rebuttal stage, is improper because it violates Section (Sec.) 5, Rule 30 of the Rules of Court, which mandates that a plaintiff must present his evidence in chief before the close of the proof, and may not add to it by the device of rebuttal. The 1995 REM and the 1997 amendment to the REM are presumed valid because they are notarized documents.

Moreover, contrary to the findings of the CA that Antonio and Remedios presented only one Tax Identification Number, the spouses also presented their individual Residence Certificates as proofs of their identity. Atty. Avelino Agudo, the Notary Public who notarized the 1995 REM, required them to produce competent evidence of identity, and verify their respective signatures on the subject document. Also, there was no categorical admission from Susan Tan that the person who appeared before the trial court as complainant in this case, is not the same person who signed the 1995 REM and the 1997 amendment.

As to the award of moral and exemplary damages, there is no evidence that Westmont Bank acted in a wanton, fraudulent, and malevolent manner. Remedios, on the other hand, is guilty of inexcusable negligence in failing to protect her interest in the conjugal properties by filing an action for judicial separation of property one year after her separation from Antonio in 1991. Assuming that Remedios' signatures on the 1995 REM and its 1997 amendment, and the 2000 REM were forged, the REMs should not be nullified entirely, but should remain valid with respect to the conjugal properties covered by the mortgage that belong to Antonio. Lastly, the nullification of the subject deeds of mortgage, which are merely accessory contracts, does not affect the validity of the promissory notes, which are the principal contracts.

RULING

The petition is bereft of merit.

Evidence that is ordered expunged from the records cannot be considered in favor of, and against a party for any purpose. To expunge means to strike out, obliterate, or mark for deletion.

In all respects, an expunged evidence does not exist in the records and, therefore, has no probative value. Here, it is undisputed that the QDR issued by the NBI, and the PNP Crime Laboratory Report were expunged from the records by virtue of this Court's final and executory Resolution dated August 20, 2008. Though admitted in evidence, these expunged documents were not the bases of the trial court in concluding that Remedios' signature was forged.

Forgery must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged.[20] Pertinently, Sec. 22, Rule 132 of the Rules of Court provides:

> SEC. 22. *How genuineness of handwriting proved.* — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

Remedios herself denied signing the 1995 REM and its 1997 amendment, and the 2000 REM. Her disavowal of her signatures on the questioned documents has probative value, and thus, may be admitted in evidence. This is the essence of our ruling in *Dela Rama v. Papa*,[21] which was aptly cited by the CA, to wit:

---

[20] *Heirs of the Late Felix M. Bucton v. Spouses Go*, 721 Phil. 851, 860 (2013).

[21] 597 Phil. 227 (2009).

Does Section 22 of Rule 132 accommodate the testimony of the very person whose signature is disputed as a means to establish the genuineness of handwriting? We believe that it does, x x x. After all, the owner of such disputed signature may fall within the category of "any witness who believes it to be the handwriting of such person because he has seen the person write x x x and has thus acquired knowledge of the handwriting of such person." In *Alo v. Rocamora*, plaintiff Alo presented in evidence a deed of sale establishing that he, and not the defendant, was the prior purchaser of the land in question. Alo himself testified as to the authenticity of the deed of sale. In discussing whether the genuineness of such document was proved, we cited the then Section 324 of the Code of Civil Procedure, which provides "any writing may be proved, either by anyone who saw the writing executed; or by evidence of the genuineness of the handwriting of the maker; or by a subscribing witness." x x x:

x x x x

Section 324 of the Code of Civil Procedure is substantially similar to Section 22 of Rule 132, so our application of the former rule in *Alo* remains appropriate today. At the very least, Section 22 of Rule 132 does not exclude such testimony from consideration. It is in fact well-established in the law of evidence that the testimony of the very person whose signature is disputed is more than competent proof on the genuineness of such signature.[22] x x x. (Citation omitted.)

Aside from Remedios' testimony denying her signature on the subject independent assessment of the authenticity of Remedios' signature on the 1995 REM and its 1997 amendment. We quote the following findings of the CA:

In the questioned signatures, the name "Remedios" appears to be unclear and cannot be easily deciphered, while in the sample signatures each letter of the word "Remedios" is legibly written. The middle initial "T" on the assailed signatures is written very close to the word "Remedios" while on the sample signatures, there is a space between the letter "T" and "Remedios". In the word "Banta", the capital "B" in the sample signatures is disconnected from the letter "a", whereas in the questioned signatures the capital "B" is connected to the letter "a". Noteworthy, the signatures appearing on the 1995 REM and 1997

[22] *Id.* at 247-248.

Amendment to the REM seem to have been written by a person with wobbly hands while the sample signatures appear to be written smoothly and with ease. Undoubtedly, these discrepancies can be easily noticed by mere physical appearance.[23]

While it is settled that resort to handwriting experts is not indispensable in the finding of forgery, their opinions are useful and may serve as additional evidence to buttress the claim of forgery. Owing to their special knowledge and trainings, they can help determine fundamental, significant differences in writing characteristics between the questioned and the standard or sample specimen signatures, as well as the movement and manner of execution strokes.[24] In this case, the handwriting experts testified based on the documents and signature examination which they performed to analyze the possibility of forgery. They personally scrutinized and compared Remedios' disputed signatures in the subject documents with her authentic sample signatures. The handwriting experts detailed the glaring and material significant differences between Remedios' genuine signatures and those appearing in the questioned documents. To be sure, their testimonies are not hearsay, nor rendered baseless by the fact that the QDR and the PNP Crime Laboratory Report were expunged from the records. Their opinions as expert witnesses can stand on their own and do not depend on the QDR and the PNP Crime Laboratory Report for their competence and probative value. Verily, the forgery was established by evidence, other than the QDR and the PNP Crime Laboratory Report.

Anent the admission in evidence of the BPI checks and various promissory notes during the rebuttal stage, we agree with Strong Fort that the same is not justified. Section 5, Rule 30 of the Rules of Court provides that the parties may respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case. Thus, a plaintiff is bound to introduce

---

[23] *Rollo*, pp. 155-156.

[24] *Tortona v. Gregorio*, 823 Phil. 980, 994 (2018).

all evidence that supports his case during the presentation of his evidence in chief before the close of the proof, and may not add to it by the device of rebuttal.[25] In *Lopez v. Liboro*,[26] we provided the circumstances in which additional evidence may be allowed at the rebuttal stage, to wit: a) when it is newly discovered; b) where it has been omitted through inadvertence or mistake; or c) where the purpose of the evidence is to correct evidence previously offered.

Here, Remedios failed to justify the presentation of the promissory notes and the BPI checks containing her forged and genuine signatures as rebuttal evidence. To note, these documents constitute direct proof of forgery, which is the main issue of the case, hence, these should have been presented as evidence in chief. It was thus, an error on the part of the trial court to allow these evidence on rebuttal. Nevertheless, it does not appear from the records that Westmont Bank raised this issue on their appeal to the CA. It was raised for the first time only in this petition for review. It is settled that no question will be considered on appeal if it was not raised in the court below. Otherwise, the court will be forced to make a judgment that goes beyond the issues and will adjudicate something in which the court did not hear the parties.[27]

In arguing that Remedios is guilty of inexcusable negligence by failing to file an action for judicial separation of property to protect her interest, Strong Fort is apparently shifting the blame on Remedios. To be sure, there is no law imposing an obligation upon Remedios to file an action in court to protect her interest in the conjugal properties because her interest is already protected and reserved for her by law as a conjugal partner. On the contrary, it is Westmont Bank that failed to observe the required level of caution in ascertaining the identity

---

[25] *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 544 (2006).

[26] 81 Phil. 431 (1948), as cited in *Republic v. Sandiganbayan, (4th Div.)*, 678 Phil. 358, 398 (2011).

[27] *Bayan v. Bayan*, G.R. No. 220741, August 14, 2019.

of the mortgagor and the genuineness of her signature. We note that the bank approved the REMs without conducting a credit investigation on Remedios. It did not also take steps to ascertain if the woman introduced by Antonio as his wife was actually Remedios. Accordingly, Westmont Bank must bear the consequences of its negligence.

Equally baseless is Strong Fort's argument that the subject deeds of mortgage should remain valid with respect to the conjugal properties that belong to Antonio. Antonio and Remedios were married on April 5, 1975, or before the Family Code took effect in 1988. Hence, the applicable law is the Civil Code of the Philippines. Article (Art.) 160 of the Civil Code provides that "[a]ll property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." The subject deeds of mortgage were executed in various years beginning 1995, or after the effectivity of the Family Code. Any alienation or encumbrance of conjugal property made during the effectivity of the Family Code is governed by Art. 124,[28] which states:

> ART. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the

[28] FAMILY CODE, as cited in *Spouses Aggabao v. Parulan, Jr.*, 644 Phil. 26, 36 (2010).

other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

Any disposition or encumbrance of a conjugal property by one spouse must be consented to, by the other; otherwise, it is void.[29] Prior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into a title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of each spouse is limited to the net remainder resulting from the liquidation of the affairs of the partnership after its dissolution. "Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs."[30] Consequently, even on the assumption that Antonio mortgaged only his portion of the conjugal partnership, the mortgage is still theoretically void because his right to one-half of the conjugal assets does not vest until the liquidation of the conjugal partnership. Notably, when Antonio executed the assailed deeds of mortgage in 1995, 1997, and 2000, his marriage with Remedios was still existing and the conjugal partnership was not yet dissolved. As such, it could not be determined yet which of the conjugal assets belong to Antonio that he can validly mortgage.

The nullity of the 1995 REM and its 1997 amendment, and the 2000 REM, notwithstanding, does not invalidate the loan as embodied in the promissory notes executed by Antonio. A mortgage is merely an accessory agreement and does not affect the principal contract of loan. The mortgages, while void, can

---

[29] *PNB v. Reyes*, 796 Phil. 736, 744 (2016).

[30] *Spouses Lita De Leon and Felix Rio Tarrosa v. Anita B. De Leon*; 611 Phil. 384, 397-398 (2009).

still be considered as instruments evidencing the indebtedness. In *Flores v. Spouses Lindo, Jr.*,[31] we pronounced:

> The liability of x x x on the principal contract of the loan however subsists notwithstanding the illegality of the mortgage. Indeed, where a mortgage is not valid, the principal obligation which it guarantees is not thereby rendered null and void. That obligation matures and becomes demandable in accordance with the stipulation pertaining to it. Under the foregoing circumstances, what is lost is merely the right to foreclose the mortgage as a special remedy for satisfying or settling the indebtedness which is the principal obligation. In case of nullity, the mortgage deed remains as evidence or proof of a personal obligation of the debtor and the amount due to the creditor may be enforced in an ordinary action.[32]

Being merely accessory contracts, the nullity of the subject deeds of real estate mortgage on account of the forged signature of Remedios, does not result in the invalidation of the loan obligation of Antonio.

Finally, whether or not the notarization of the 1995 REM is regular, contrary to the findings of the CA; whether or not Atty. Avelino Agudo, the Notary Public who notarized the 1995 REM, required Antonio and Remedios to produce competent evidence of identity; whether or not there was categorical admission from Susan Tan that the person who appeared before the trial court as complainant in this case is not the same person who signed the 1995 REM and the 1997 amendment; and, whether or not Westmont Bank acted in wanton, fraudulent, and malevolent manner under the circumstances — involve questions of fact which are beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*, it is not this Court's task to go over the proofs presented below to ascertain if they were appreciated and weighed correctly, most especially when the CA and the RTC speak as one in their findings and conclusions. While it is widely held that this rule of limited

---

[31] 664 Phil. 210 (2011), as cited in *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*, 740 Phil. 35, 52 (2014).

[32] *Flores v. Spouses Lindo, Jr., id.* at 218.

jurisdiction admits of exceptions, none exists in the instant case.[33]

FOR THESE REASONS, the petition is **DENIED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo, Lazaro-Javier,* and *Rosario,*[*] *JJ.*, concur.

---

[33] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990).

[*] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 225266. November 16, 2020]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **EAST ASIA UTILITIES CORPORATION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS THEREOF.— Forum-shopping consists of filing multiple suits in different courts, either simultaneously or successively, involving the same parties, to ask the courts to rule on the same or related causes and/or to grant the same or substantially same reliefs, on the supposition that one or the other court would make a favorable disposition. There is forum shopping when there exist: (a) the identity of parties, or at least such parties as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other case.

2. ID.; ID.; ID.; ID.; IDENTITY OF RIGHTS; WHEN THE SAME PARTIES ARE ASSERTING DIFFERENT RIGHTS IN TWO CASES, THERE IS NO FORUM SHOPPING, AS THE DECISION IN ONE CASE WILL NOT AMOUNT TO *RES JUDICATA* IN THE OTHER CASE.— [T]he CIR filed [before the Supreme Court] a motion for extension of time to file a petition for review relative to the Decision dated February 3, 2016 of the CTA *En Banc* in CTA EB No. 1207. The case was docketed as G.R. No. 222824. The CIR also filed a motion for reconsideration of the same Decision before the CTA *En Banc*. Clearly, there is an identity of parties in both cases –– the CIR, although represented by two different agencies, the OSG and the BIR.

However, there is no identity of rights asserted. G.R. No. 222824 is a request for more time to file a petition for review

under Rule 45 of the Rules of Court, while the motion filed with the CTA *En Banc* is a reconsideration of the Decision dated February 3, 2016. While both motions pertain to the same Decision of the CTA *En Banc* in CTA EB No. 1207, the CIR is asserting different rights. Moreover, a "judgment" rendered in G.R. No. 222824 will not amount to *res judicata* as the Resolution will be limited to the granting or denying the motion for time; or the Resolution of the CTA *En Banc* of the CIR's motion for reconsideration will not result to a *res judicata* in G.R. No. 222824.

3. ID.; ID.; APPEALS; OFFICE OF THE SOLICITOR GENERAL (OSG); IN APPEALS BEFORE THE SUPREME COURT, THE OSG IS THE PROPER REPRESENTATIVE OF THE COMMISSIONER OF INTERNAL REVENUE (CIR); WHERE THE CIR WAS REPRESENTED BY THE BIR's LITIGATION DIVISION, SUCH PROCEDURAL LAPSE MAY BE DISREGARDED IF THE OSG WAS NOTIFIED OF ALL THE PROCEEDINGS AND THE INTERESTS OF THE GOVERNMENT HAVE BEEN DULY PROTECTED.— In *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue,* the Court stressed that the OSG is the proper representative of the CIR in appellate proceedings, particularly before this Court, . . .

We note that the BIR's Litigation Division represents the CIR in all pleadings filed before this Court. Even so, records reveal that the OSG has been notified of the proceedings since filing the motion for extension of time to file a petition for review and all issuances of this Court regarding the case's developments. Thus, the interests of the government have been duly protected. Hence, we may disregard this procedural lapse to give due course to the petition. Be that as it may, we again remind the BIR to be mindful of this long established procedure before this Court so that any similar incident may not happen again.

4. TAXATION; PHILIPPINE ECONOMIC ZONE AUTHORITY LAW (R.A. NO. 7916); GROSS INCOME, DEFINED; A PEZA-REGISTERED ENTERPRISE IS ENTITLED TO A SPECIAL TAX OF 5% ON GROSS INCOME EARNED WITHIN THE ECOZONE IN LIEU OF ALL NATIONAL AND LOCAL TAXES. — Under Section 24 of RA No. 7916

(PEZA Law), a PEZA-registered enterprise, such as East Asia Utilities, is entitled to the special tax of 5% on gross income earned within the ECOZONE *in lieu* of all national and local taxes. Gross income refers to "gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and *minus costs of sales or direct costs* but before any deduction is made for administrative expenses or incidental losses during a given taxable period."

5. ID.; ID.; ID.; ID.; ALLOWABLE DEDUCTIONS FROM GROSS INCOME; REVENUE REGULATION (RR) NO. 11-2005, AS AMENDED; STATUTORY CONSTRUCTION; INTERPRETATION OF THE WORD "INCLUDE"; THE ENUMERATION OF DIRECT COSTS DEDUCTIBLE FROM A PEZA-REGISTERED ENTERPRISE'S GROSS INCOME UNDER R.R. NO. 11-2005 IS NOT EXCLUSIVE. — [T]he BIR issued RR No. 11-2005 revoking Section 7 of RR No. 2-2005 and removing the exclusivity of the enumeration of cost or expense that is allowed as a deduction from gross income. . . .

> For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are **included** in the allowable deductions to arrive at gross income earned for specific types of enterprises: . . .

The word "include" means "to take in or comprise as a part of a whole;" "to contain as a part of something. The participle *including* typically indicates a partial list." In *Sterling Selections Corp. v. Laguna Lake Development Authority (LLDA)*, the Court held that using the word "including" necessarily conveys the enumeration's very idea of non-exclusivity. Thus, the word "involving" when understood in the sense of "including," implies that there are activities other than those included. . . .

. . .

As the amendment in RR No. 11-2005 now stands, the enumeration of allowable deductions was only made by way of example or illustration of the nature and type of expenses that may be deducted from a PEZA-registered enterprise's gross income for purposes of computing the 5% GIT. The maxim *expressio unius est exclusio alterius* does not apply. Besides,

the BIR should not have issued RR No. 11-2005 and deleted the phrase "shall consist *only* of the following cost or expense item" and changed it to "the following direct costs are *included* in the allowable deductions" if it did not intend to remove the restriction on the expenses that may be deducted. The deletion of the restrictive word "only" is also consistent with Section 24 of the PEZA Law that costs and expenses directly related to the enterprise's PEZA-registered activity and are not administrative, marketing, selling and/or operating expenses or incidental losses shall be allowed as deduction from gross income.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUE OF WHETHER A CERTAIN AMOUNT IS ALLOWED AS DEDUCTION FROM GROSS INCOME IS FACTUAL, AND THEREFORE, NOT COGNIZABLE IN A RULE 45 PETITION.— [T]he CIR insists that the ₱24,669,324.88 amount allowed as deduction by the CTA *En Banc* is not directly related to East Asia Utilities' power generation services. However, this issue is factual in nature and not appropriately cognizable in a Rule 45 Petition for Review on *Certiorari* where only questions of law may be generally raised. It is not this Court's function to analyze and weigh all over again evidence already considered in the proceedings below. Our jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court.

7. ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, WHICH HAS GAINED EXPERTISE ON TAX PROBLEMS, ARE GENERALLY CONCLUSIVE UPON THE SUPREME COURT.— [T]he findings of fact of the CTA, which is, by the very nature of its functions, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, are generally regarded as final, binding, and conclusive upon this Court. The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion. The CIR has not sufficiently presented a case for the application of an exception from the rule.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Gatmaytan Yap Patacsil Gutierrez and Protacio for respondent.

D E C I S I O N

LOPEZ, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated February 3, 2016 and Resolution[3] dated May 24, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1207, which affirmed the Division's Decision[4] dated May 21, 2014 and Resolution[5] dated August 6, 2014 in CTA Case No. 8179, finding East Asia Utilities Corporation (East Asia Utilities) liable for deficiency income tax in the reduced amount of ₱612,406.94.

ANTECEDENTS

East Asia Utilities is a domestic corporation registered with the Philippine Economic Zone Authority (PEZA) as an ECOZONE Utilities Enterprise at the Mactan Economic Zone and West Cebu Industrial Park-Special Economic Zone.[6] Under

---

[1] *Rollo*, pp. 11-25.

[2] *Id.* at 28-43; penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Associate Justices Lovell R. Bautista, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban. Presiding Justice Roman G. Del Rosario wrote his Concurring and Dissenting Opinion, and joined by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, and Caesar A. Casanova; see *id.* at 44-46.

[3] *Id.* at 47-51.

[4] *Id.* at 232-268; penned by Associate Justice Amelia R. Cotangco-Manalastas, with the concurrence of Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova.

[5] *Id.* at 449-459.

[6] *Id.* at 232-234.

PEZA Certificate of Board Resolution dated January 28, 2000, East Asia Utilities is entitled to the incentives under Sections 24 and 42 of Republic Act (RA) No. 7916, as amended, such as payment of the special five percent (5%) tax on gross income in *lieu* of national and local taxes.

On July 17, 2009, East Asia Utilities received a Preliminary Assessment Notice (PAN) from the Commissioner of Internal Revenue[7] (CIR) assessing it for deficiency tax in the amount of ₱5,892,780.71, consisting of (a) income tax in the amount of ₱5,884,985.91 and (b) expanded withholding tax (EWT) in the amount of ₱7,794.80 for the calendar year ending December 2006, plus interest to be computed upon payment. East Asia Utilities filed a reply to the PAN on August 3, 2009.

On September 29, 2009, East Asia Utilities received a Formal Letter of Demand together with Audit Result/Assessment Notice dated August 25, 2009, requesting East Asia Utilities to pay the aggregate amount of ₱6,095,971.08, representing deficiency income tax of ₱6,087,916.46 and deficiency EWT of ₱8,054.62. East Asia Utilities paid the deficiency EWT on October 10, 2009. On October 29, 2009, East Asia Utilities filed its protest disputing the deficiency income tax assessment.

On September 17, 2010, East Asia Utilities received the Final Decision on Disputed Assessment assessing it for deficiency income tax in the reduced amount of ₱2,791,894.70, inclusive of increments. The deficiency arose from the CIR's disallowance of East Asia Utilities' claimed costs and expenses in the amount of ₱34,467,835.76 broken down as follows:[8]

PARTICULARS	AMOUNT
SSS-employer cost	₱ 305,882.12
Pag-[IBIG] employer cost	24,950.78
Medical/health insurance	465,621.03

[7] Through the BIR's Large Taxpayer's District Office-Cebu, District Office No. 123. *Id.* at 233.

[8] *Id.* at 246-247.

Accident/Life insurance	70,410.55
Uniform/working gears	319,257.02
Employee Activities	20,486.59
Training and Development-non-technical	31,495.87
Training and Development-technical	125,838.74
Insurance and Freight	1,707,489.68
Hauling and Trucking Services	23,952.75
Brokerage Fees	261,829.61
Other inventory incidental cost	536,977.10
Safety programs and services	1,695,767.23
Other professional fees	182,939.12
DOE Electrification Fund	7,338,411.98
Insurance-power plant	19,473,119.22
Insurance-other assets	152,531.85
General Office-expense	1,057,080.11
Business expense	636,604.54
Taxes and licenses	36,189.87
TOTAL	**₱34,467,835.76**[9]

On October 15, 2010, East Asia Utilities filed a Petition for Review before the CTA Division, praying that the assessment be cancelled.

Ruling of the CTA

After trial, the CTA Division rendered its Decision[10] finding East Asia Utilities liable for deficiency income tax in the reduced amount of ₱612,406.94.[11] The CTA Division held that the amendment of Revenue Regulations (RR) No. 2-2005[12] by RR

---

[9] *Id.*

[10] *Supra* note 4.

[11] *Rollo*, p. 267.

[12] CONSOLIDATED REVENUE REGULATIONS IMPLEMENTING RELEVANT PROVISIONS OF REPUBLIC ACT [RA] NO. 7227 OTHERWISE KNOWN AS "*BASES CONVERSION AND DEVELOPMENT ACT OF 1992*[,"] [RA] NO. 7916 AS AMENDED OTHERWISE KNOWN AS "*SPECIAL ECONOMIC ZONE ACT OF 1995*[,"] [RA] NO. 7903 OTHERWISE KNOWN AS "*ZAMBOANGA CITY SPECIAL ECONOMIC ZONE ACT OF 1995*" AND [RA] NO. 7922 OTHERWISE KNOWN AS "*CAGAYAN SPECIAL ECONOMIC ZONE OF 1995*" THEREBY AMENDING REVENUE

No. 11-2005[13] rendered the enumeration of allowable deductions from gross income of a PEZA-registered enterprise, such as East Asia Utilities, no longer exclusive. The criteria for determining the deductibility of an expense for computing the 5% Gross Income Tax (GIT) is the direct relation of the item in the rendition of PEZA-registered services. The CTA Division found that only ₱9,798,510.88[14] out of the ₱34,467,835.76 amount disallowed by the CIR are recurring costs associated with the central operations of the corporation and, therefore, cannot be deducted from East Asia Utilities' gross income to

---

REGULATIONS NO. 1-95 AS AMENDED BY REVENUE REGULATIONS NO. 16-99, dated February 8, 2005.

[13] REGULATIONS DEFINING "GROSS INCOME EARNED" TO IMPLEMENT THE TAX INCENTIVE PROVISION IN SECTION 24 OF [RA] NO. 7916, OTHERWISE KNOWN AS "THE SPECIAL ECONOMIC ZONE ACT OF 1995" REVOKING SECTION 7 OF REVENUE REGULATIONS NO. 2-2005, AND SUSPENDING THE EFFECTIVITY OF CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 2-2005, dated April 25, 2005.

[14] *Rollo*, p. 265. The disallowed cost of services are follows:

PARTICULARS	**AMOUNT**
Accident/Life insurance	₱ 19,825.75
Working gears	84,543.05
Uniform	5,778.66
Employee Activities	20,486.59
Training and Development-non-technical	31,495.87
Training and Development-technical	28,821.21
Insurance and freight	322,503.04
Brokerage fees	9,013.66
Other inventory incidental cost	175,819.55
Other professional fees	31,937.00
DOE Electrification Fund	7,338,411.98
General Office-expense	1,057,080.11
Business expense	636,604.54
Taxes and Licenses	36,189.87
TOTAL	**₱ 9,798,510.88**

compute the 5% GIT. The CTA allowed the following expenses as deduction from gross income which were directly related to East Asia Utilities' power generation services:[15]

PARTICULARS	AMOUNT
SSS-Employer Cost	₱ 306,882.12
Pag-IBIG-Employer Cost	24,950.78
Medical/Health Insurance	465,621.03
Accident/Life Insurance	50,584.80
Uniform/Working Gears	228,935.31
Training and Development-technical	97,017.53
Hauling and Trucking Services	23,952.75
Insurance and Freight	1,384,986.64
Brokerage Fees	252,815.95
Other Inventory Incidental Cost	361,157.55
Safety Programs and Services	1,695,767.23
Other Professional Fees	151,002.12
Insurance-Power Plant	19,473,119.22
Insurance-Other Assets	152,531.85
TOTAL	**₱ 24,669,324.88**

The dispositive portion of the Decision[16] dated May 21, 2014 reads:

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment for deficiency income tax is **UPHELD** with modifications. [East Asia Utilities] is hereby **ORDERED TO PAY** [the CIR] for deficiency 5% GIT for the year 2006 in the amount of ₱612,406.94, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, x x x.

x x x x

---

[15] *Id.* at 250-264.

[16] *Supra* note 4.

SO ORDERED. [17] (Emphases in the original.)

East Asia Utilities and the CIR separately filed motions for reconsideration but were denied by the CTA Division on August 6, 2014, for lack of merit.[18] The CTA Division held that the word "included" as used in RR No. 11-2005 necessarily conveys the idea of non-exclusivity of the enumeration of allowable deductions and that the principle of *expressio unius est exclusio alterius* does not apply. The CTA reiterated that East Asia Utilities cannot deduct the amount of P9,798,510.88 which represents operating expenses not directly associated with the rendition of its registered activity.

Undaunted, the CIR, through the Litigation Division of the Bureau of Internal Revenue (BIR), interposed an appeal to the CTA *En Banc* in its Petition for Review dated September 4, 2014.[19] East Asia Utilities filed its Comment[20] on October 23, 2014.

On September 25 and 26, 2014, East Asia Utilities paid ₱741,257.35[21] to the Treasurer's Office of the City of Lapu-Lapu and ₱1,111,886.03[22] to the BIR, or a total amount of ₱1,853,143.38, representing its deficiency income tax for the taxable year 2006 plus surcharge and interest as of September 26, 2014.

On February 3, 2016, the CTA *En Banc* affirmed the CTA Division's findings and conclusion, and disposed:[23]

---

[17] *Rollo*, p. 266.

[18] *Supra* note 5. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, [East Asia Utilities] Motion for Partial Reconsideration and [the CIR]'s Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED. (Emphasis in the original.) *Rollo*, p. 459.

[19] *Id.* at 462-475.

[20] *Id.* at 478-512.

[21] *Id.* at 460. Official Receipt No. 4599648.

[22] *Id.* at 461. Payment Transaction No. 147604980.

[23] *Supra* note 2.

WHEREFORE, the Petition for Review filed by the Commissioner of Internal Revenue on September 8, 2014, is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution promulgated on May 21, 2014 and August 6, 2014, respectively, are **AFFIRMED**.

SO ORDERED.[24] (Emphases in the original.)

Aggrieved, on February 26, 2016, the CIR, represented by the **BIR's Litigation Division**, sought reconsideration[25] of the Decision dated February 3, 2016. East Asia Utilities opposed.[26]

Meanwhile, the **Office of the Solicitor General** (OSG) filed a Motion for Extension of Time to File Petition for Review on *Certiorari*[27] dated February 24, 2016 (motion for time) on the CIR's behalf before this Court in connection with the Decision dated February 3, 2016 of the CTA *En Banc* in CTA EB No. 1207. The motion for time was docketed as **G.R. No. 222824**.[28] The Court granted the motion in its Resolution dated March 7, 2016.[29]

Thereafter, the OSG filed a Manifestation and Motion[30] dated March 21, 2016, stating that it learned that a motion for reconsideration was filed with the CTA *En Banc*; hence, the OSG deemed it prudent to withdraw the motion for time that it previously filed. East Asia Utilities did not object to the OSG's withdrawal of the motion for time. Still, it submitted that the Decision dated February 3, 2016 of the CTA *En Banc* had attained finality for the CIR's failure to perfect his appeal within the allowable period.[31]

---

[24] *Rollo*, p. 42.

[25] *Id.* at 567-576. See also *supra* note 3.

[26] *Id.* at 585-620.

[27] *Id.* at 578-582.

[28] *Id.* at 583.

[29] *Id.* at 583-584.

[30] *Id.* at 621-624.

[31] *Id.* at 625-631.

In its Resolution dated June 27, 2016, the Court noted the OSG and East Asia Utilities' manifestations and declared **G.R. No. 222824** closed and terminated, *viz.*:[32]

"**G.R. No. 222824** ***(Commissioner of Internal Revenue vs. East Asia Utilities Corporation)***. — The Court resolves to:

1. **NOTE** the Office of the Solicitor General's manifestation and motion dated 21 March 2016, praying for the withdrawal of the motion for extension to file petition for review on certiorari on the ground that petitioner has opted to adhere to the established policy of avoiding inordinate demands upon the Honorable Court's time and attention by filing a motion for reconsideration before the Court of Tax Appeals;

2. **NOTE** the manifestation dated 13 April 2016 filed by counsel for respondent, relative to the withdrawal of the motion for extension of time to file petitions and the filing of motion for reconsideration before the Court of Tax Appeals, submitting that the subject decision has now attained the status of a final and unappealable decision based on the ground stated therein; and

3. **DECLARE** this case **CLOSED** and **TERMINATED**." x x x.[33]

Meantime, the CTA *En Banc* issued a Resolution[34] on May 24, 2016, denying the CIR's motion for reconsideration of the Decision dated February 3, 2016 for lack of merit.

Thus, on June 22, 2016, the CIR, through the **Litigation Division of the BIR**, posted a motion for extension of time to file a petition[35] before this Court and docketed as **G.R. No. 225266**. East Asia Utilities opposed, stating that the motion for extension should be denied for the following reasons: (a) the Litigation Division of the BIR is not authorized to file the

---

[32] *Id.* at 662-663.

[33] *Id.* at 662.

[34] *Supra* note 3. The dispositive portion of the Resolution reads:

WHEREFORE, the Motion for Reconsideration filed by petitioner Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit. *Rollo*, p. 50.

[35] *Id.* at 3-7.

motion; and (b) the CIR committed willful and deliberate forum-shopping for pursuing multiple remedies relative to CTA EB No. 1207.[36] The Court granted the CIR's motion for extension and noted East Asia Utilities' opposition in its Resolution dated November 9, 2016.[37]

On July 22, 2016, the CIR filed its Petition for Review on *Certiorari*[38] *via* registered mail and received by this Court on August 10, 2016.

The CIR insists that the enumeration of direct costs and expenses under RR No. 11-2005 is exclusive. *Expressio unius est exclusio alterius*. Even assuming that the list is not all-inclusive, the CTA erroneously allowed ₱24,669,324.88 as deductible costs because these expenses are not directly related to East Asia Utilities' power generation services.

In its Comment,[39] East Asia Utilities maintains that the petition should be dismissed outright because: (a) the CIR failed to perfect an appeal since it filed the petition in the wrong case — in **G.R. No. 222824**, instead of the present case with **G.R. No. 225266** and as such, the petition is legally inexistent in so far as **G.R. No. 225266** is concerned; (b) the Litigation Division had no authority to file the motion for extension of time to file the petition and the instant petition; (c) the CIR committed willful and deliberate forum-shopping; and (d) the petition is a mere rehash of the arguments made before the CTA. In any event, the CTA *En Banc* correctly ruled that RR No. 11-2005 is not all-inclusive and intended merely as a guide in determining the items that may be considered for income tax deduction purposes. Lastly, the CIR cannot raise for the first time on appeal to the CTA *En Banc*, and thereafter, to this Court, the issue of whether the cost and expenses allowed as deductions by the CTA are directly related to the rendition of PEZA-registered

---

[36] *Id.* at 56-65.

[37] *Id.* at 116-117.

[38] *Supra* note 1.

[39] *Rollo*, pp. 136-208.

activities. Further, this is a factual question not cognizable in a Rule 45 petition.

RULING

We deny the petition.

Before delving on the merits of this case, we shall first discuss the procedural lapses committed by the CIR, particularly: (1) forum shopping; (2) lack of authority on the part of the BIR's Litigation Division to file the petition; and (3) placing of an erroneous docket number in the petition for review.

The CIR is not guilty of forum shopping.

Forum-shopping consists of filing multiple suits in different courts, either simultaneously or successively, involving the same parties, to ask the courts to rule on the same or related causes and/or to grant the same or substantially same reliefs, on the supposition that one or the other court would make a favorable disposition.[40] There is forum shopping when there exist: (a) the identity of parties, or at least such parties as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other case.[41]

Here, the CIR filed a motion for extension of time to file a petition for review relative to the Decision dated February 3, 2016 of the CTA *En Banc* in CTA EB No. 1207. The case was docketed as G.R. No. 222824. The CIR also filed a motion for reconsideration of the same Decision before the CTA *En Banc*. Clearly, there is an identity of parties in both cases — the CIR,

---

[40] *Alaban v. CA*, 507 Phil. 682, 695-696 (2005).

[41] *Spouses Zosa v. Judge Estrella*, 593 Phil. 71, 77 (2008), quoting *Young v. Spouses Sy*, 534 Phil. 246, 264 (2006); *Veluz v. CA*, 399 Phil. 539, 548-549 (2000).

although represented by two different agencies, the OSG and the BIR.

However, there is no identity of rights asserted. G.R. No. 222824 is a request for more time to file a petition for review under Rule 45 of the Rules of Court, while the motion filed with the CTA *En Banc* is a reconsideration of the Decision dated February 3, 2016. While both motions pertain to the same Decision of the CTA *En Banc* in CTA EB No. 1207, the CIR is asserting different rights. Moreover, a "judgment" rendered in G.R. No. 222824 will not amount to *res judicata* as the Resolution will be limited to the granting or denying the motion for time; or the Resolution of the CTA *En Banc* of the CIR's motion for reconsideration will not result to a *res judicata* in G.R. No. 222824. Besides, the records indicate that the OSG filed its Manifestation and Motion[42] dated March 21, 2016, informing the Court of a pending motion for reconsideration filed by the BIR's Litigation Division with the CTA *En Banc*. As such, G.R. No. 222824 was declared closed and terminated.[43] Clearly, there is no forum shopping.

The Office of the Solicitor General is the proper party to represent the Republic in appeals before this Court.

In *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*,[44] the Court stressed that the OSG is the proper representative of the CIR in appellate proceedings, particularly before this Court, *viz.*:

> We are mindful of Section 220 of Republic Act No. 8424 or the Tax Reform Act of 1997, which provides that legal officers of the Bureau of Internal Revenue are the ones tasked to institute the necessary civil or criminal proceedings on behalf of the government:
>
> x x x x

---

[42] *Supra* note 30.

[43] *Supra* note 32.

[44] 749 Phil. 155 (2014).

Nonetheless, this court has previously ruled on the issue of the Bureau of Internal Revenue's representation in appellate proceedings, particularly before this court:

> **The institution or commencement before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987.** Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to —
>
> > (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.
> >
> > x x x x
> >
> > (3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.
>
> **In *Gonzales vs. Chavez*, the Supreme Court has said that, from the historical and statutory perspectives, the Solicitor General is the "principal law officer and legal defender of the government."** x x x

From the foregoing, **we find that the Office of the Solicitor General is the proper party to represent the interests of the**

government through the Bureau of Internal Revenue. The Legal Division of the Bureau of Internal Revenue should be mindful of this procedural lapse in the future.[45] (Emphases supplied.)

We note that the BIR's Litigation Division represents the CIR in all pleadings filed before this Court. Even so, records reveal that the OSG has been notified of the proceedings since filing the motion for extension of time to file a petition for review and all issuances of this Court regarding the case's developments. Thus, the interests of the government have been duly protected.[46] Hence, we may disregard this procedural lapse to give due course to the petition. Be that as it may, we again remind the BIR to be mindful of this long established procedure before this Court so that any similar incident may not happen again.

Erroneous docket number in the petition.

In the old case of *Llantero v. CA*,[47] the Court had the occasion to rule that a motion, albeit seasonably filed, is legally inexistent for all intents and purposes since it erroneously bore the docket number of another case.[48] It could not be attached to the *expediente* of the correct case.[49]

We observed that the petition for review bore docket number **G.R. No. 222824**, and was deleted by a horizontal line through the "222824."[50] The Affidavit of Service attached to the petition indicated that the petition was filed for **G.R. No. 222824**.[51] However, the correct docket number – G.R. No. 225266 – was

---

[45] *Id.* at 183-185.

[46] *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, *supra* note 43, at 185.

[47] 193 Phil. 41 (1981).

[48] *Id.* at 46.

[49] *Id.*

[50] *Rollo*, p. 11.

[51] *Id.* at 27.

written by hand beside the deleted docket number in the petition for review. All notices issued by this Court refer to G.R. No. 225266, and it appears that all pleadings filed by the parties relative to the case were compiled in the *rollo* of G.R. No. 225266. Accordingly, the possibility of misplacing and mixing up pleadings and court issuances and not attaching them in the *expediente* of the correct case as what happened in *Llantero* was averted. On this score, we conclude that the petition should not be dismissed on this ground alone.

A relaxation of the CIR's procedural slip-ups notwithstanding, we deny the petition for lack of merit.

The enumeration of direct costs deductible from a PEZA-registered enterprise's gross income in RR No. 11-2005 is not exclusive.

Under Section 24[52] of RA No. 7916[53] (PEZA Law), a PEZA-registered enterprise, such as East Asia Utilities, is entitled to the special tax of 5% on gross income earned within the ECOZONE in *lieu* of all national and local taxes. Gross income refers to "gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and *minus costs of sales or direct costs* but before any deduction is made for administrative expenses or incidental losses during a given taxable period."[54]

---

[52] SECTION 24. *Exemption from Taxes under the National Internal Revenue Code*. — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. x x x

x x x x

[53] THE SPECIAL ECONOMIC ZONE ACT OF 1995; approved on February 24, 1995.

[54] SEC. 2, par. (nn), RULES AND REGULATIONS TO IMPLEMENT [RA] NO. 7916, OTHERWISE KNOWN AS "THE SPECIAL ECONOMIC ZONE ACT OF 1995"; approved on May 17, 1995; published in the Philippine Star on May 28, 1995.

Thereafter, the BIR issued RR No. 2-2005[55] to implement Section 24, *viz.*:

SECTION 7. Gross income earned. — For purposes of the application of these Regulations "gross income earned" shall refer to gross sales or gross revenue derived from registered business activity within the Zone net of sales discounts, sales returns and allowances minus cost of sales or direct costs but before any deductions for administrative, marketing, selling, operating expenses or incidental losses during a given taxable. For financial enterprises, gross income shall include interest income, gains from sales, and other income.

For purposes of computing the total five percent (5%) tax rate imposed by Republic Act No. 7916, the cost of sales or direct cost **shall consist only of** the following cost or expense items which shall be computed in accordance with Generally Accepted Accounting Principles (GAAP):

x x x x

For ECOZONES under RA No. 7916 —

x x x x

2. ECOZONE Developer/Operator, Facilities, Utilities and Tourism Enterprises:

— Direct salaries, wages or labor expense
— Service supervision salaries
— Direct materials, supplies used
— Depreciation of machinery and equipment used in registered activities
— Financing charges associated with fixed assets used in registered activities the amount of which were not capitalized
— Rent and utility charges for buildings and capital equipment used in undertaking registered activities (Emphasis supplied.)

By using the phrase "shall consist *only* of the following cost or expense item," RR No. 2-2005 restricted the allowable

[55] *Supra* note 12.

deductions from gross income of a PEZA-registered enterprise to the enumerated cost and expenses.

Later, the BIR issued RR No. 11-2005[56] revoking Section 7 of RR No. 2-2005 and removing the exclusivity of the enumeration of cost or expense that is allowed as a deduction from gross income. Section 3 provides:

> SECTION 3. Gross Income Earned. — For purposes of implementing the tax incentive of registered Special Economic Zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term "gross income earned" shall refer to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales or direct costs but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period.
>
> For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are **included** in the allowable deductions to arrive at gross income earned for specific types of enterprises:
>
> x x x x
>
> 2. ECOZONE Developer/Operator, Facilities, Utilities and Tourism Enterprises:
>
> — Direct salaries, wages or labor expense
> — Service supervision salaries
> — Direct materials, supplies used
> — Depreciation of machineries and equipment used in the rendition of registered services, and of that portion of the building owned or constructed that is used exclusively in the rendition of registered service
> — Rent and utility charges for buildings and capital equipment used in the rendition of registered services
> — Financing charges associated with fixed assets used in the registered service business the amount of which were not previously capitalized (Emphasis supplied.)

---

[56] *Supra* note 13.

The word "include" means "to take in or comprise as a part of a whole";[57] "to contain as a part of something. The participle *including* typically indicates a partial list."[58] In *Sterling Selections Corp. v. Laguna Lake Development Authority (LLDA)*,[59] the Court held that using the word "including" necessarily conveys the enumeration's very idea of non-exclusivity.[60] Thus, the word "involving," when understood in the sense of "including," implies that there are activities other than those included. For example, if an agreement includes technical or financial assistance, there is, apart from such assistance, something else already in, and covered or may be covered by, the agreement.[61] Similarly, in *United Coconut Planters Bank v. E. Ganzon, Inc.*,[62] we construed the word "including" in Section 9 (3) of *Batas Pambansa Blg. 129*, which enumerated the quasi-judicial agencies within the exclusive appellate jurisdiction of the Court of Appeals not exclusive, *viz.*:

A perusal of Section 9(3) of Batas Pambansa Blg. 129, as amended, and Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure reveals that the BSP Monetary Board is not included among the quasi-judicial agencies explicitly named therein, whose final judgments, orders, resolutions or awards are appealable to the Court of Appeals. **Such omission, however, does not necessarily mean that the Court of Appeals has no appellate jurisdiction over the judgments, orders, resolutions or awards of the BSP Monetary Board.**

It bears stressing that Section 9(3) of Batas Pambansa Blg. 129, as amended, on the appellate jurisdiction of the Court of Appeals,

---

[57] Webster's All-in-One Dictionary and Thesaurus, 2008 ed. cited in *Sterling Selections Corp. v. Laguna Lake Development Authority (LLDA)*, 662 Phil. 243, 261 (2011).

[58] Black's Law Dictionary, 2009 ed.

[59] 662 Phil. 243 (2011).

[60] *Id.* at 261-262. See *United Coconut Planters Bank v. E. Ganzon, Inc.*, 609 Phil. 104, 121 (2009), and *Binay v. Sandiganbayan*, 374 Phil. 413, 440-441 (1999).

[61] *Id.* at 662, quoting *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 486 Phil. 754, 796 (2004).

[62] 609 Phil. 104 (2009).

generally refers to quasi-judicial agencies, instrumentalities, boards, or commissions. **The use of the word "including" in the said provision, prior to the naming of several quasi-judicial agencies, necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.**[63] (Emphases supplied; citation omitted.)

The Court reiterated this rule in *Binay v. Sandiganbayan*.[64] Petitioners therein argue that they are municipal officials excluded from the exclusive original jurisdiction of the Sandiganbayan under Section 4a (1) of PD No. 1606, as amended by RA No. 7975, invoking the rule in statutory construction *expressio unius est expressio alterius*. We ruled:

> Resort to statutory construction, however, is not appropriate where the law is clear and unambiguous. The law is clear in this case. As stated earlier, Section 4a(1) of P.D. No. 1606, as amended by R.A. No. 7975, speaks of "[o]fficials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade '27' and higher, of the Compensation and Position Classification Act of 1989."
>
> The Court fails to see how a different interpretation could arise even if the plain meaning rule were disregarded and the law subjected to interpretation.
>
> **The premise of petitioners argument is that the enumeration in Section 4a(1) is exclusive. It is not. The phrase "specifically including" after "[o]fficials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade '27' and higher, of the Compensation and Position Classification Act of 1989" necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only. In *Conrado***

---

[63] *Id.* at 121.

[64] 374 Phil. 413 (1999).

***B. Rodrigo, et al. vs. The Honorable Sandiganbayan (First Division), supra*, the Court held that the catchall in Section 4a(5) was "necessary for it would be impractical, if not impossible, for Congress to list down each position created or will be created pertaining to Grades 27 and above." The same rationale applies to the enumeration in Section 4a(1). Clearly, the law did not intend said enumeration to be an exhaustive list.**[65] (Emphasis supplied; citations omitted.)

As the amendment in RR No. 11-2005 now stands, the enumeration of allowable deductions was only made by way of example or illustration of the nature and type of expenses that may be deducted from a PEZA-registered enterprise's gross income for purposes of computing the 5% GIT. The maxim *expressio unius est exclusio alterius* does not apply.[66] Besides, the BIR should not have issued RR No. 11-2005 and deleted the phrase "shall consist *only* of the following cost or expense item" and changed it to "the following direct costs are *included* in the allowable deductions" if it did not intend to remove the restriction on the expenses that may be deducted. The deletion of the restrictive word "only" is also consistent with Section 24 of the PEZA Law that costs and expenses directly related to the enterprise's PEZA-registered activity and are not administrative, marketing, selling and/or operating expenses or incidental losses shall be allowed as deduction from gross income. Accordingly, the CTA *En Banc* did not err in examining the nature and type of each of the expenses East Asia Utilities claimed as deductions *vis-à-vis* their relation to East Asia Utilities' PEZA-registered activities in computing the correct amount of tax deficiency.

Still, the CIR insists that the ₱24,669,324.88 amount allowed as deduction by the CTA *En Banc* is not directly related to East Asia Utilities' power generation services. However, this issue is factual in nature and not appropriately cognizable in a

---

[65] *Id.* at 439-440.

[66] See *Sterling Selections Corp. v. Laguna Lake Development Authority (LLDA)*, *supra* note 59; and *Binay v. Sandiganbayan*, *supra* note 64.

Rule 45 Petition for Review on *Certiorari* where only questions of law may be generally raised. It is not this Court's function to analyze and weigh all over again evidence already considered in the proceedings below. Our jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court. Besides, the findings of fact of the CTA, which is, by the very nature of its functions, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, are generally regarded as final, binding, and conclusive upon this Court. The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion. The CIR has not sufficiently presented a case for the application of an exception from the rule.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo, Lazaro-Javier,* and *Rosario,*[*] *JJ.* , concur.

[*] Designated as additional Member *per* Special Order No. 2797 dated November 5, 2020.

THIRD DIVISION

[G.R. No. 225781. November 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,**[1] *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; RAPE, ELEMENTS THEREOF, PRESENT IN CASE AT BAR.— The gravamen of the crime of Rape is carnal knowledge of a woman against her will. The following elements must be proven beyond reasonable doubt for the conviction of the accused in the crime of Rape: (i) that the accused had carnal knowledge of the victim; and (ii) the act was accomplished (a) through the use of force or intimidation; or (b) when the victim is deprived of reason or otherwise unconscious; or (c) when the victim is 12 years of age, or is demented.

In the instant case, the foregoing elements are all present. The victim testified that accused-appellant had sexual intercourse with her, against her will, while pointing a bladed weapon at her neck. She clearly recalled her horrendous experience at the hands of accused-appellant, as can be seen in her testimony . . . .

2. ID.; ID.; REMEDIAL LAW; EVIDENCE; CORROBORATIVE EVIDENCE; WHILE MEDICAL EXAMINATION OF THE VICTIM AND MEDICAL CERTIFICATE ARE NOT INDISPENSABLE IN THE PEOSECUTION OF A RAPE CASE, THEY ARE CORROBORATIVE PIECES OF EVIDENCE WHICH STRONGLY BOLSTER THE VICTIM'S TESTIMONY.— The victim's detailed and straightforward testimony was likewise corroborated by the medical findings of Dr. Basco. On January 8, 2006, she examined

---

[1] Initials were used to identify accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/ Personal Circumstances issued on September 5, 2017.

the victim and found contusions and lacerations on her sexual organ. Settled is the rule that "[w]hile a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster the victim's testimony."

3. ID.; ID.; REMEDIAL LAW; EVIDENCE; AFFIDAVITS OF DESISTANCE OR RECANTATIONS; IN RAPE CASES, AFFIDAVITS OF DESISTANCE OR RECANTATIONS ARE GENERALLY VIEWED UNFAVORABLY BY COURTS' WITNESSES SINCE THEY CAN BE EASILY OBTAINED FOR MONETARY CONSIDERATION OR THROUGH INTIMIDATION.— As a rule, courts view unfavorably affidavits of desistance or a recantation of a victim's testimony, especially in rape cases, since "they can be easily obtained for monetary consideration or through intimidation." We maintain the same unflattering attitude towards the victim's affidavit of retraction in this case.

4. ID.; ID.; ID.; ID.; ID.; THE EXECUTION OF AN AFFIDAVIT OF DESISTANCE IS RENDERED SUSPECT BY THE LONG PASSAGE OF TIME BETWEEN THE TIME THE VICTIM TESTIFIED AGAINST THE ACCUSED AND THE TIME OF RECANTATION.— [T]he victim testified against accused-appellant on July 24, 2008, September 25, 2008 and December 11, 2008 while she executed her affidavit of desistance on November 26, 2013 and testified for him on November 28, 2013, wherein she confirmed having executed said Affidavit, denied that accused-appellant had raped her, and claimed that she filed the cases merely at the behest of her mother. Thus, five years had passed from the time she testified against him to the time she recanted her testimony. This long passage of time renders suspect her execution of the affidavit.

This Court notes that if indeed the crime did not happen, the victim would have executed the affidavit of desistance at the earliest time possible. However, it took her almost eight years from the crime's commission on December 25, 2005 to recant her own testimony.

5. ID.; ID.; ID.; ID.; ID.; THE CLAIM IN THE AFFIDAVIT OF DESISTANCE THAT THE CRIME DID NOT HAPPEN IS UNDERMINED BY THE VICTIM'S CONSENT TO BE SUBJECTED TO MEDICAL EXAMINATION AND TRIAL.— [The victim] allowed herself to be subjected to a medical examination by Dr. Basco and to grueling hours of direct and cross examination in the trial court. All these undermine her claim in the affidavit of desistance that the crime did not happen.

In addition, We find that her recollection and testimony as to how accused-appellant had raped her were detailed and consistent. This Court finds no sufficient evidence that she was forced or pressured to testify against accused-appellant at the start.

6. ID.; ID.; ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; DESIGNATION OF OFFENSES; WHEN THE ELEMENTS OF BOTH VIOLATIONS OF SECTION 5(b) OF REPUBLIC ACT (R.A.) NO. 7610 AND OF ARTICLE 266-A, PARAGRAPH 1(a) OF THE REVISED PENAL CODE (RPC) ARE MISTAKENLY ALLEGED IN THE SAME INFORMATION AND PROVEN DURING TRIAL, THE ACCUSED SHOULD STILL BE PROSECUTED PURSUANT TO THE RPC, AS AMENDED BY R.A. NO. 8353.— The designation of the crime committed by accused-appellant . . . must be corrected.

Accused-appellant faces conviction for one count of Rape committed against the victim when she was 14 years old. Article 266-A, Paragraph 1(a) of the RPC applies to this charge, herein reiterated:

Art. 266-A. *Rape, When and How Committed*. – Rape is committed - . . .

. . .

a) Through force, threat or intimidation. . . .

Article 266-B of the RPC prescribes the appropriate penalty for the commission of Rape under Paragraph 1, Article 266-A of the same law . . . .

. . .

The courts below found accused-appellant guilty of one count of Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1(a) of the RPC in relation to RA 7610**. The Court fixes this error in the nomenclature of accused-appellant's crime. As it should stand, accused-appellant should be held criminally liable for one count of Rape defined under **Article 266-A, Paragraph 1(a), penalized under Article 266-B of the RPC. The correlation to RA 7610 is deleted**. *People v. Tulagan* explains the *ratio* for a correct designation of offenses under Article 266-A, Paragraph 1(a) and Article 266-B of the RPC and not under RA 7610:

> Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — *e.g.*, carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1(a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, **while RA. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.**

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC x x x

Withal, the rectification of accused-appellant's conviction for one count of Rape under a single criminal law provision is in order. Accused-appellant is liable for one count of Rape under Article 266, Paragraph 1(a) of the RPC in Criminal Case No. 692-06-P.

7. ID.; ID.; RAPE COMMITTED WITH USE OF DEADLY WEAPON; PENALTY.— The penalty of *reclusion perpetua* as imposed by the courts below is however unaffected and thus retained. Article 266-B of the RPC provides that "whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death". In view of accused-appellant's use of a bladed weapon in the commission of the crime, he should suffer the penalty of *reclusion perpetua* under Article 266-B of the RPC since such use of the bladed weapon was alleged in the Information and sufficiently proven during trial.

8. ID.; QUALIFIED RAPE; SPECIAL QUALIFYING CIRCUMSTANCES; REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; TO WARRANT CONVICTION FOR QUALIFIED RAPE, THE SPECIAL QUALIFYING CIRCUMSTANCES MUST BE ALLEGED IN THE INFORMATION.— The CA and the trial court correctly disregarded the qualifying circumstance of accused-appellant's relationship to the victim as her mother's live-in partner since this circumstance was not alleged in the Information, although it was proven during trial. The rule is that "in order for an accused to be convicted of qualified rape, the Information must allege that the victim is under eighteen (18) years of age at the time of rape and the accused is the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity

within the third civil degree, or common-law spouse of the victim's parent. These are special qualifying circumstances which alter the nature of the crime of rape and warrant the increase of the imposable penalty."

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this appeal is the September 24, 2015 Decision[2] of the Court of Appeals (CA) in CA-GR CR-HC No. 06715 affirming *in toto* the January 21, 2014 Joint Decision[3] of the Regional Trial Court (RTC), Branch 38 of San Jose City, Nueva Ecija in Criminal Case No. 692-06-P which found XXX (accused-appellant) guilty beyond reasonable doubt of the crime of Rape.

The Antecedents

Accused-appellant was charged in two separate Informations with the crimes of Rape and Attempted Rape under Article 266-A of the Revised Penal Code (RPC) in relation to Republic Act No. (RA) 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, as amended, allegedly committed as follows:

Criminal Case No. 692-06-P:

That on or about the 25th day of December 2005, at about 8:00 o'clock in the evening, at [redacted][4] Province of

---

[2] *Rollo*, pp. 2-11; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Danton Q. Bueser and Carmelita Salandanan-Manahan.

[3] CA *rollo*, pp. 22-33; penned by Presiding Judge Loreto S. Alog, Jr.

[4] Geographical location was blotted out per Supreme Court Amended Administrative Circular No. 83-2015 or *Protocols and Procedures in the*

Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon, by means of force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge of one AAA[5] a minor, 14 years old, against her will, to her damage and prejudice.

All contrary to law with the aggravating circumstances of nighttime, abuse of confidence with the act done in the house of complainant.

CONTRARY TO LAW.[6]

Criminal Case No. 691-06-P:

That on or about the 5th day of January 2006, at about 11:00 in the morning, at [redacted] Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, said accused armed with a kitchen knife, suddenly pulled the arm and ordered [AAA], a minor, 14 years old, to climb to a wooden bed and forcibly removed her panty and shorts and lied on top of her thereby commencing the commission of Rape in relation to R.A. 7610, which should have produced the crime of Rape in relation to R.A. 7610 but was not able to consummate Rape by reason of accident other than his own spontaneous desistance, that is, the arrival of [BBB],[7] the mother of [AAA] who beat [XXX] with a piece of wood.

Contrary to law with aggravating circumstance of abuse of confidence.

CONTRARY TO LAW.[8]

Upon arraignment, accused-appellant pleaded not guilty to crimes charged against him.[9]

Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances issued on September 5, 2017.

[5] Initials were used for the name of minor victim per Supreme Court Amended Administrative Circular No. 83-2015, id.

[6] *Records*, Volume 1, p. 2.

[7] Initials were used for the name of minor victim's mother per Supreme Court Amended Administrative Circular No. 83-2015, *supra* note 3.

[8] CA *rollo*, pp. 22-23.

[9] *Rollo*, p. 3.

In the course of the trial, the prosecution presented the victim AAA, her mother, BBB, and physician Dr. Ma. Eilyn F. Basco (Dr. Basco), as its witnesses. On the other hand, the defense presented accused-appellant as its witness. However, the victim executed a *Sinumpaang Salaysay ng Pag-uurong ng Habla*[10] dated November 26, 2013, wherein she made the following declarations:

> 2. Na, ako ay hindi na interesado pang ipagpatuloy ang pag-uusig kay [XXX] dahil ang mga pangyayari ay bunga lamang ng di namin pagkakaunawaan, tampo at galit ko sa naturang akusado kaya ako ay nakagawa ng maling paratang laban sa kanya;
>
> 3. Na, naayos na namin ang hidwaang namagitan sa amin at hindi kaya ng aking konsensiya na ipakulong ang taong wala naman talagang kasalanan sa akin[.][11]

As a result thereof, she also testified for the accused-appellant.

Version of the Prosecution:

On December 25, 2005, at around 8 o'clock in the evening, BBB was out having a drink with her neighbors, while AAA and her siblings were left in their house. Around the same time, AAA's siblings were already sleeping in a room, while the victim was sleeping on a bench outside the said room. Meanwhile, accused-appellant, the live-in partner of BBB, who earlier declared that he would be going to his ducks or "itikan," returned to their house. He then chanced upon the victim and proceeded to remove her clothes, leaving her totally naked. After undressing himself, accused-appellant went on top of the victim and held her hands. She resisted but he poked a bladed weapon at her neck and told her not to tell anybody or else he would kill her and her family. Thereafter, he inserted his penis into the victim's vagina, and kissed her lips and neck. Being then a virgin, she experienced vaginal pain and bleeding. After feeling something hot spew from accused-appellant's private part, AAA recalled

---

[10] Records, Volume 1, p. 213.

[11] Id.

that he removed his penis from her vagina, dressed himself and left. She remained at their house and cried.[12]

On January 5, 2006, AAA and her sister went to the hut erected on the place where accused-appellant was raising ducks to get drinking water from an artesian well. Upon seeing her, he held her hands and brought her inside the hut. He then instructed her to lie down on a wooden bed. When she refused to abide by his instruction, he poked a pointed knife at her neck.[13]

Accused-appellant then went on top of the victim. When he was about to remove his pants, BBB arrived. Upon seeing her live-in partner on top of her daughter who was wriggling her feet, BBB hit him with a piece of wood. Thereafter, BBB tried to wrest the knife from his waist, but failed to do so because he held BBB who suffered an injury on her hands as a result thereof.[14]

The victim then left and proceeded to the house of her friend. BBB followed her and asked her how many times had accused-appellant molested her. She then revealed to her that he also sexually molested her the previous month.[15]

Together, AAA and BBB reported the sexual molestations to the barangay authorities. On January 8, 2006, AAA underwent a medical examination, wherein Dr. Basco made the following findings:

> Contusion with Laceration, 0.5 cms at 5 o'clock, Left Lover Vaginal Orifice.
>
> Contusion, Left upper Anterior Vaginal Wall.[16]

---

[12] CA *rollo*, p. 45.

[13] Id.

[14] Id. at 45-46.

[15] Id. at 46.

[16] Folder of Exhibits, Exh. D.

Version of the Defense:

Accused-appellant vehemently denied the accusation against him. He claimed that at about 8 o'clock in the evening of December 25, 2005, he was alone in his farm which is about a kilometer away from their house. He had no occasion to leave the place.[17]

He also pointed to the victim's affidavit of desistance dated November 26, 2013, and the fact that she also testified for him on November 28, 2013 where she confirmed executing the affidavit of retraction, denied that accused-appellant raped her, and claimed that she filed the cases merely at the behest of her mother, BBB.[18]

Ruling of the Regional Trial Court:

In a January 21, 2014 Joint Decision,[19] the RTC of San Jose City, Nueva Ecija acquitted accused-appellant of the charge of Attempted Rape but convicted him of one count of Rape.[20] The dispositive portion of the Joint Decision reads:

> WHEREFORE, his guilt for the offense charged in Criminal Case No. 691-06-P not having been established beyond reasonable doubt, the accused [XXX] is ACQUITTED.
>
> Said accused, however, is hereby found guilty of rape defined and penalized under Art. 266-A in relation to Art. 266-B of the Revised Penal Code in Criminal Case No. 692-06-P and is accordingly sentenced to suffer the penalty of *reclusion perpetua*, and such accessory penalties provided by law.
>
> The accused is likewise found liable to pay [AAA] civil indemnity and moral damages, each in the amount of ₱50,000.00 both of which must earn interest at the rate of 6% per *annum* from finality of this judgment until fully paid.

---

[17] *Rollo*, p. 5.

[18] Id.

[19] Id. at 22-34.

[20] Id.

SO ORDERED.[21]

Ruling of the Court of Appeals:

In its September 24, 2015 Decision, the CA dismissed accused-appellant's appeal, and upheld the findings of the RTC. It pointed out that recantations of testimonies are frowned upon by the courts as they are generally unreliable in character.[22] The dispositive portion of the appellate court's Decision reads:

> **WHEREFORE**, the foregoing considered, the appeal is hereby **DENIED** and the judgment of the Trial Court rendered on January 21, 2014, being in accord with the facts and the law, convicting [XXX] for Rape under Criminal Case No. 692-06-P with the penalty of *reclusion perpetua* and all its accessory penalties, civil indemnity of P50,000.00 and moral damages of ₱50,000.00, with 6% interest per *annum* for each award from the date of finality of the judgment until fully paid, is hereby **AFFIRMED** in all aspects.
>
> **SO ORDERED.**[23] (Emphasis in the original)

Dissatisfied, accused-appellant filed the instant appeal.[24]

Issue

Whether or not the prosecution has proven the guilt of accused-appellant beyond reasonable doubt for the crime of Rape.

Our Ruling

We affirm accused-appellant's conviction.

Accused-appellant is guilty beyond reasonable doubt of the crime of Rape.

The gravamen of the crime of Rape is carnal knowledge of a woman against her will.[25] The following elements must be

---

[21] Id. at 34.

[22] *Rollo*, p. 7.

[23] Id. at 10.

[24] Id. at 12.

[25] *People v. Buca*, 770 Phil. 318, 330 (2015).

proven beyond reasonable doubt for the conviction of the accused in the crime of Rape: (i) that the accused had carnal knowledge of the victim; and (ii) the act was accomplished (a) through the use of force or intimidation; or (b) when the victim is deprived of reason or otherwise unconscious; or (c) when the victim is 12 years of age, or is demented.[26]

In the instant case, the foregoing elements are all present. The victim testified that accused-appellant had sexual intercourse with her, against her will, while pointing a bladed weapon at her neck.[27] She clearly recalled her horrendous experience at the hands of accused-appellant, as can be seen in her testimony below:

[FISCAL LEDDA]:	In the evening of the same day December 25, 2005, where were you?
[VICTIM]:	I was also in our house, sir.
Q:	Did you have any companion?
A:	I have, sir.
Q:	Who was your companion?
A:	Also my siblings, sir.
Q:	Where were your stepfather [XXX] at that time?
A:	He told us that he will be going to his ducks or "itikan," sir.
Q:	Did he go there?
A:	But he did not go there instead.
Q:	Instead, where did he go?
A:	He returned to us, sir.
Q:	When your stepfather returned to you[,] what happened if there was any?
A:	And then he raped me, sir.

---

[26] REVISED PENAL CODE, Article 266-A; see also *People v. Court of Appeals*, 755 Phil. 80, 103 (2015).

[27] TSN, July 24, 2008, pp. 6-7.

Q: Where did your stepfather rape you?
A: Also in our house, sir.

Q: Inside a room?
A: In our bench because I used to sleep in our bench, sir.

x x x x

Q: Where are the other siblings when you were sleeping?
A: They were inside the room, sir.

Q: Before your stepfather raped you, what did he do first?
A: He removed my clothes, sir.

Q: What were you wearing at that time?
A: Only a short, sir.

Q: Were you also wearing a panty?
A: I have a panty, sir.

Q: How about the upper portion of your body, what were you wearing?
A: A t-shirt, sir.

Q: Are you also wearing a bra?
A: I was also wearing a bra, sir.

Q: What clothes were removed by the accused?
A: My panty, sir.

Q: What else?
A: My bra, sir.

Q: What about your short pants?
A: Yes, sir.

Q: How about your shirt?
A: Yes, sir.

Q: So in other words you are telling this Court that you are totally naked?
A: Yes, sir.

Q: So he removed all your clothes including your panty and bra. What did [XXX] do, if there was any?

A: And then he raped me, sir.

Q: How did he commence the rape?
A: At first he placed his body above me, sir.

Q: What was he wearing at that time?
A: He was wearing a t-shirt and a maong short, (sic) sir.

Q: What did he do with his manong (sic) short when he went on top of you?
A: He removed his maong short, sir.

Q: Was he wearing brief (sic)?
A: There was, sir.

Q: What did he do with his brief (sic)?
A: He also removed his brief (sic), sir.

Q: How about his short, did he remove it?
A: Yes, sir.

Q: He was totally naked when he went on top of you?
A: Yes, sir.

Q: So when he went on top of you where you were totally naked and so he was also totally naked, what else did you do?
A: He held my hands, sir.

Q: And what did he do when he held your hands?
A: I was resisting but he poked a bladed weapon [at] my neck.

Q: Describe that bladed weapon. How long it was (sic)?
A: About one hand breadth in length.

Q: When he poked that [at] your neck, did he say something?
A: Yes, sir.

Q: What did he say?
A: And he told me not to tell to anybody or else he would kill us all, sir.

Q: Upon saying that, what else did he do?
A: And then he inserted his penis into my genital, sir.

Q: Was he able to insert his penis?
A: Yes, sir.

Q: What did you feel when he inserted his penis into your vagina?
A: I felt pain, sir.

Q: Why did you feel pain?
A: Because I was bleeding.

Q: Did you have any sexual experience before you were allegedly raped by your stepfather [XXX]?
A: None, sir.

Q: In other words, you were then virgin?
A: Yes, sir.

Q: For how long was your stepfather [XXX] on top of you and his penis inserted [into] your vagina?
A: About two (2) minutes, sir.

Q: Why did you not resist?
A: I was also resisting but he was holding my hands, sir.

Q: After two minutes that he was on top of you and having inserted his penis inside of yours, what happened if there was any?
A: Then he started kissing me, sir.

Q: What part of your body was kissed by him?
A: My lips and my neck, sir.

Q: For how long did he kiss you?
A: Only for a while, sir.

Q: Did he ejaculate?
A: Yes, sir.

Q: Why do you know?
A: I felt it inside, sir.

Q:	Why did you feel it inside when you said he ejaculated?
A:	I felt something hot sir.
Q:	After he allegedly inserted his penis [into] your genital and after you said he ejaculated, what happened next?
A:	Then he removed his penis [from] my genital, sir.[28]

The victim's detailed and straightforward testimony was likewise corroborated by the medical findings of Dr. Basco. On January 8, 2006, she examined the victim and found contusions and lacerations on her sexual organ.[29] Settled is the rule that "[w]hile a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster the victim's testimony."[30]

Accused-appellant is guilty of the crime charged despite the recantation of the victim.

As a rule, courts view unfavorably affidavits of desistance or a recantation of a victim's testimony, especially in rape cases, since "they can be easily obtained for monetary consideration or through intimidation."[31] We maintain the same unflattering attitude towards the victim's affidavit of retraction in this case.

Firstly, the victim testified against accused-appellant on July 24, 2008, September 25, 2008 and December 11, 2008 while she executed her affidavit of desistance on November 26, 2013 and testified for him on November 28, 2013, wherein she

---

[28] Id. at 4-8.

[29] Folder of Exhibits, Exh. D.

[30] *People v. Palanay*, 805 Phil. 116, 124 (2017).

[31] *People v. ZZZ*, G.R. No. 229862, June 19, 2019.

confirmed having executed said Affidavit, denied that accused-appellant had raped her, and claimed that she filed the cases merely at the behest of her mother.[32] Thus, five years had passed from the time she testified against him to the time she recanted her testimony. This long passage of time renders suspect her execution of the affidavit.

This Court notes that if indeed the crime did not happen, the victim would have executed the affidavit of desistance at the earliest time possible. However, it took her almost eight years from the crime's commission on December 25, 2005 to recant her own testimony. Moreover, she allowed herself to be subjected to a medical examination by Dr. Basco and to grueling hours of direct and cross examination in the trial court. All these undermine her claim in the affidavit of desistance that the crime did not happen.

In addition, We find that her recollection and testimony as to how accused-appellant had raped her were detailed and consistent. This Court finds no sufficient evidence that she was forced or pressured to testify against accused-appellant at the start. This Court's ruling in *People v. Bensurto*[33] is instructive:

> As to the retraction of AAA, this Court has ruled that when a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony. As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State like AAA is exceedingly unreliable, and secondly, because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the

---

[32] *Rollo*, p. 5.

[33] 802 Phil. 766-779 (2016).

recantation. Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it. The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses. x x x[34]

We hold, in sum, that the prosecution has proven beyond reasonable doubt, that indeed, accused-appellant is guilty of the crime of Rape. An affirmation of his judgment of conviction as to the crime charged is therefore in order.

The designation of the crime committed by accused-appellant, however, must be corrected.

Accused-appellant faces conviction for one count of Rape committed against the victim when she was 14 years old. Article 266-A, Paragraph 1 (a) of the RPC applies to this charge, herein reiterated:

> Art. 266-A. *Rape, When and How Committed.* — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> **a) Through force, threat or intimidation**;
>
> x x x x (Emphasis supplied.)

---

[34] Id. at 774-775.

Article 266-B of the RPC prescribes the appropriate penalty for the commission of Rape under Paragraph 1, Article 266-A of the same law, *viz.*:

> ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

The courts below found accused-appellant guilty of one count of Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1 (a) of the RPC in relation to RA 7610**. The Court fixes this error in the nomenclature of accused-appellant's crime. As it should stand, accused-appellant should be held criminally liable for one count of Rape defined under **Article 266-A, Paragraph 1 (a), penalized under Article 266-B of the RPC**.[35] **The correlation to RA 7610 is deleted.** *People v. Tulagan*[36] explains the *ratio* for a correct designation of offenses under Article 266-A, Paragraph 1 (a) and Article 266-B of the RPC and not under RA 7610:

> Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — *e.g.*, carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, **while RA. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions**

---

[35] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[36] Id.

prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC. x x x[37] (Emphasis supplied.)

Withal, the rectification of accused-appellant's conviction for one count of Rape under a single criminal law provision is in order. Accused-appellant is liable for one count of Rape under Article 266, Paragraph 1 (a) of the RPC in Criminal Case No. 692-06-P.

The penalty of *reclusion perpetua* as imposed by the courts below is however unaffected and thus retained. Article 266-B of the RPC provides that "whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death." In view of accused-appellant's use of a bladed weapon in the commission of the crime, he should suffer the penalty of *reclusion perpetua* under Article 266-B of the RPC since such use of the bladed weapon was alleged in the Information and sufficiently proven during trial.[38]

The CA and the trial court correctly disregarded the qualifying circumstance[39] of accused-appellant's relationship to the victim as her mother's live-in partner since this circumstance was not

---

[37] Id.

[38] CA *rollo*, p. 47; *See also* TSN, July 24, 2008, pp. 6-7.

[39] REVISED PENAL CODE, Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

alleged in the Information,[40] although it was proven during trial.[41] The rule is that "in order for an accused to be convicted of qualified rape, the Information must allege that the victim is under eighteen (18) years of age at the time of rape and the accused is the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or common-law-spouse of the victim's parent. These are special qualifying circumstances which alter the nature of the crime of rape and warrant the increase of the imposable penalty."[42]

In line with recent jurisprudence, however, the civil indemnity and moral damages that must be awarded to the victim should be increased from ₱50,000.00 to ₱75,000.00 each.[43] Exemplary damages of ₱75,000.00 are likewise granted to the victim following our ruling in *People v. Ramos*.[44] Furthermore, all amounts due shall earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.[45]

WHEREFORE, the appeal is **DISMISSED**. The September 24, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06715 is hereby **AFFIRMED with MODIFICATION**.

---

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

x x x x

[40] *Records*, Volume 1, p. 2.

[41] TSN, September 24, 2013, p. 65.

[42] *People v.* [redacted] G.R. No. 229836, July 17, 2019.

[43] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

[44] G.R. No. 210435, August 15, 2018.

[45] *Id*.

Accused-appellant is held **GUILTY** of Rape under Article 266-A, Paragraph 1 (a) in relation to Article 266-B of the Revised Penal Code. He is hereby **SENTENCED** to *reclusion perpetua*. The correlation to Republic Act No. 7610 is **DELETED**. He is **ORDERED** to pay the victim AAA the following amounts: (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱75,000.00 as exemplary damages. All amounts due shall earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos,* and *Gaerlan,*[*] *JJ.*, concur.

[*] Designated as additional member per raffle dated November 11, 2020 vice *J.* Rosario who recused due to prior action in the Court of Appeals.

SECOND DIVISION

[G.R. No. 238263. November 16, 2020]

DEPARTMENT OF TRADE AND INDUSTRY AND ITS BUREAU OF PRODUCT STANDARDS, *Petitioners, v.* **STEELASIA MANUFACTURING CORPORATION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; EXPANDED *CERTIORARI* JURISDICTION; A DECLARATORY RELIEF IS UNAVAILING WHEN THERE IS ALREADY A BREACH OF THE RIGHTS INVOLVED, IN WHICH CASE, THE *CERTIORARI* POWER OF THE COURT MAY BE INVOKED TO DETERMINE THE EXISTENCE OF GRAVE ABUSE OF DISCRETION.— ***Municipality of Tupi v. Faustino*** citing ***Aquino v. Municipality of Aklan*** elucidates on the concept of declaratory relief, *viz*.:

> **An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder.** Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, **and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute,** deed or contract to which it refers. . . .

A similar ruling was pronounced in ***Ferrer v. Bautista***, ***DOTR v. PPSA***, and most recently in ***Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*** As the Court invariably held in these cases, the party assailing the validity of a statute or administrative issuance may only do

so via declaratory relief when there has yet been no breach of the rights involved. Otherwise, the party should invoke the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Here, declaratory relief is unavailing since Steelasia claims that its constitutional right to equal protection had already been infringed when the DTI Regulations became effective. Thus, Steelasia should have invoked instead the *certiorari* powers of the courts to nullify the alleged *ultra vires* acts. On this ground alone, the petition should have already been dismissed outright.

2. ID.; ID.; ID.; ID.; WHEN LEGAL QUESTIONS OF GREAT IMPORTANCE ARE TO BE RESOLVED, A PETITION FOR DECLARATORY RELIEF, THOUGH IMPROPER, MAY BE TREATED AS A PETITION FOR *CERTIORARI*.— In ***Diaz v. The Secretary of Finance,*** the Court held that it has ample power to waive technical requirements when the legal questions to be resolved are of great importance to the public. . . .

Similarly, the petition for declaratory relief filed here, though improper, must also be treated as a petition for *certiorari* for the Court to decide the case on the merits and lay the issues to rest. As in ***Diaz***, the present case also poses far-reaching implications on public welfare. For importation affects not only private businesses involved in trade; it also impacts the national economy which stands to gain or lose significantly depending on the government policy which the Court would uphold. Too, the processes of the DTI would affect the end-users and consumers who will ultimately shoulder the real costs of inefficiency. For these reasons, the Court resolves to treat the petition below as a petition for *certiorari* and shall proceed to decide the case on the merits.

3. POLITICAL LAW; STATUTORY CONCTRUCTION; STATUTES; R.A. NO. 4109; R.A. NO. 7394; DOCTRINE OF IN *PARI MATERIA*; R.A. NO. 4109 AND R.A. NO. 7394 ARE IN *PARI MATERIA* AND OUGHT TO BE APPLIED TOGETHR ON ALL IMPORTED

MERCHANDISE.— The doctrine of in *pari materia* requires that statutes on the same subject be construed together because legislative enactments are supposed to form part of one uniform system. More, the legislature is supposed to have in mind the existing legislations in the passage of its acts. Thus, later statutes are deemed supplementary or complementary to earlier enactments.

Notably, RA 4109 is not the sole statute governing the testing, inspection, and certification requirements implemented by the DTI on imported goods. RA 7394 or the Consumer Act also covers the same requirement.

. . .

. . . [T]here is no substantial difference between the **texts of RA 4109 and RA 7394** insofar as they **require prior testing, inspection, and certification of product quality and safety as conditions *sine qua non* to the release of imported merchandise to the market or in commerce**. This requirement is **intended to prevent substandard products from getting released to the market and eventually falling into the hands of innocent consumers regardless of the nature of the merchandise, whether they be consumer's products or services or otherwise**. On this score, the distinction being raised by Steelasia as to the kind of imported products governed by RA 4109, on one hand, and those by RA 7394, on the other, has no bearing at all on the required testing, inspection, and certification of product quality and safety prior to the release of any kind of imported products to the market or in commerce. Both laws are in *pari materia* and ought to be applied together on **all** imported merchandise.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; DEPARTMENT OF TRADE AND INDUSTRY (DTI); BASIS OF DTI's QUASI-LEGISLATIVE OR RULE–MAKING POWER; DELEGATION OF LEGISLATIVE POWER; REQUISITES THEREOF; THE PROVISIONS OF R.A. NO. 7394 AND R.A. NO. 4109 ARE COMPLETE IN THEIR RESPECTIVE TERMS AND CONTAIN SUFFFICIENT STANDARDS FOR THE DTI TO IMPLEMENT THEM AND TO DETERMINE THE DETAILS OF SUCH IMPLEMENTATION.— An

implementing rule or regulation is a valid exercise of subordinate legislation if it complies with the following parameters:

. . .

> **. . . (1) the completeness of the statute making the delegation; and (2) the presence of a sufficient standard.**
>
> **To determine completeness, all of the terms and provisions of the law must leave nothing to the delegate except to implement it.** "What only can be delegated is **not the discretion to determine what the law shall be** but **the discretion to determine how the law shall be enforced**."
>
> More relevant here, however, is the presence of a sufficient standard under the law. Enforcement of a delegated power may only be effected in conformity with a **sufficient standard**, which is used "**to map out the boundaries of the delegate's authority and thus 'prevent the delegation from running riot.**'" The **law must contain the limitations or guidelines to determine the scope of authority** of the delegate.

The rule-making power of the DTI is found in Section 2 of EO No. 293 (1993) . . . .

. . .

The standards relevant to the present case are found in Section 14 of RA 7394 and Section 4(d) of RA 4109 (1967) . . . .

Here, not only are the aforementioned provisions **complete** in their respective terms, but each of them also contains sufficient **standards** for the DTI to determine **how the ICC requirement shall be processed,** including the **preparatory steps for the discharge [of] this particular duty** such as where the imported products shall be stored in the meantime. While this is not expressly stated in the statutes, this is **necessarily implied** from the **principal mandate** given to the DTI for the issuance or non-issuance of the ICC. The DTI does not have to do anything except implement the provisions based on the standards and limitations provided by the statutory provisions, the **details of such implementation** being left of necessity to the DTI to determine.

5. ID.; ID.; ID.; ID.; ID.; DTI's REGULATIONS; CONDITIONAL RELEASE OF IMPORTED GOODS; THE CONDITIONAL RELEASE OF IMPORTED GOODS IS MERELY FOR THEIR PHYSICAL TRANSFER FROM THE BUREAU OF CUSTOMS (BOC) PREMISES TO AN ACCREDITED WAREHOUSE OR STORAGE SPACE PREPARATORY TO THE ISSUANCE OR DENIAL OF IMPORT COMMODITY CLEARANCE AND DOES NOT EFFECTIVELY SKIP THE REQUIREMENTS OF TESTING, INSPECTION, AND CERTIFICATION.— The present challenge focuses on Section 4.1.1.1 of DAO No. 5 allowing **conditional release** from BOC's custody of imported goods that have yet to be tested, inspected, and certified provided the importer shall have already complied with the BOC's requirements and any other requirements of the DTI. To emphasize, it is a **mere preparatory step** to the **principal mandate** for the ICC issuance or denial, a portion of the **detail** in the **implementation** of Section 15 of RA 7394 and Section 4(d) of RA 4109. The purpose is to provide swift and effective solutions to the very real problems of delays in shipment release, port congestion, and storage costs brought about by the increasing importations *vis-a-vis* the rapidly developing global industry.

As aptly argued by the OSG, **conditional release** does **not** pertain to the **release of imported goods to the market or in commerce,** but only to its **physical transfer or movement from the BOC premises to a suitable, secure, safe, and accredited warehouse or storage space pending compliance with the requisite testing, inspection, and certification**. These procedures shall no longer be performed within the congested BOC premises but in the testing center or laboratory using samples from the materials that are safely secured in the storage facility pending clearance of all the necessary approvals.

It is not true that **the conditional release of the merchandise from the BOC premises to a suitable, safe, and secure accredited warehouse or storage space effectively skips the requirements of testing, inspection, and clearance under RA 4109.** On the contrary, it paves the way for an efficient, convenient, and expeditious process of testing, inspection, and certification of the merchandise. It thus ensures that only those imported goods that have passed the DTI's standard of safety

and quality are released to the market for sale, disposition, or distribution to consumer.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE CONDITIONAL RELEASE IS IMPERATIVE INSOFAR AS THE STEEL INDUSTRY IS CONCERNED SINCE THE INSPECTION AND CERTIFICATION INSIDE THE CUSTOMS PREMISES ARE HIGHLY IMPRACTICAL DUE TO LIMITED SPACE AND THE PRESCRIBED PROCEDURE FOR TESTING OF STEEL BARS REQUIRES THE INSTALLATION OF HIGHLY SPECIALIZED EQUIPMENT IN A LABORATORY.— Insofar as the steel industry is concerned, conditional release is imperative since doing the BPS inspection and certification right inside the customs premises is highly impractical, if not impossible primarily due to its limited space. Not only that. Since the prescribed procedure requires the installation of highly specialized equipment and machinery in a laboratory, at present, it can only be done by the lone testing center for steel bars in the country, the MIRDC of the DOST inside its laboratory in Bicutan.

To be sure, **Steelasia itself does not deny that the DTI's policy of allowing the conditional release of imported merchandise was impelled by considerations of convenience and efficiency.** It does not deny either that the BOC premises are highly congested. Nor does it deny that there is only one testing facility (MIRDC) servicing all demands for testing, inspection, and certification of steel bars and that conducting an actual and thorough testing in the congested BOC premises is extremely difficult as it even affects the quality of the testing process. Notably, the trial court opined that it is the government's duty to provide a testing facility within the BOC area itself. But for this facility to get constructed, the government has to reckon with several factors such as the availability of funds, space, manpower, among others. Meantime, the government has to deal with the fact that there is but a single testing center available in the country which, much as it wants to, cannot do the testing and inspection on all shipments inside the BOC premises all at the same time.

7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; SIMILAR TO THE JUDICIAL CONCEPT OF *CUSTODIA LEGIS* OVER ITEMS IN LITIGATION, THE DTI RETAINS CONTROL OVER THE

IMPORTED GOODS WHEN RELEASED FROM THE PHYSICAL CUSTODY OF THE BOC TO AN ACCREDITED WAREHOUSE TO PRESERVE THEIR SECURITY AND INTEGRITY.— The assailed DTI Regulations thus puts context to the conditional release of merchandise. . . .

Based thereon, the warehouse or storage area where the imported items are physically transferred will be padlocked, limiting access thereto to authorized personnel only. Also, the shipment shall be sealed prior to testing, inspection, and certification for the purpose of ensuring against any alteration, movement, or transfer thereof without the knowledge of BPS or DTI. Finally, the BPS and the DTI are authorized to institute additional measures to maintain the integrity of this process.

Clearly, while the imported goods may have been released from the **physical** custody of the BOC to an accredited warehouse, their security and integrity are nevertheless preserved. Similar to the judicial concept of *custodia legis* over items in litigation, the DTI retains control over the imported commodities to ensure that substandard materials are not altered, sold, transferred, or used at any given time prior to compliance with the requirements of testing, inspection and certification. Consequently, it cannot be said that the assailed issuances are arbitrary or contrary to the intent and spirit of the law.

8. ID.; STATUTES; REPUBLIC ACT NO. 7394 (THE CONSUMER ACT OF THE PHILIPPINES); JOINT PROMULGATION OF RULES; JOINT PROMULGATION OF RULES BY THE DTI AND THE BOC IS REQUIRED ONLY IN CASES WHERE THE ALTERATION OR MODIFICATION OF THE IMPORTED GOODS MAY BE ALLOWED BUT IT DOES NOT REQUIRE THE PARTIES TO SIGNIFY THEIR CONCURRENCE IN THE SAME DOCUMENT.— Article 15(c) of RA 7394 covers situations wherein the imported goods have already undergone testing and failed the mandatory product standards. In such a case, the goods may still be released for a maximum of ten (10) days for the limited purpose of alteration or modification to make them compliant. This is the only instance where the joint promulgation of rules by the DTI and the BOC is required under Article 15. It does not contemplate scenarios wherein imported

goods are simply moved to a warehouse or storage area before they are sent to testing facilities.

. . . [T]he law requires the DTI and the BOC to jointly promulgate rules only in cases where the alteration or modification of the imported goods may be allowed. And rightly so since the integrity of the imported goods would no longer be preserved in such cases. To repeat, as with any other property in *custodia legis*, imported goods pending clearance may not be altered or modified without the imprimatur and compliance with rules of the agency having custody over them.

At any rate, joint promulgation of rules does not require that the parties signify their concurrence in the same document. For instance, the BOC issued CMC 99-2017 dated July 7, 2017 specifying the documents to be submitted to facilitate the physical release of imported cement pending compliance with the required testing, inspection and certification. This is in response to DTI DAO No. 17-05, s. 2017 on the guidelines for the mandatory certification of cement products.

More, the BOC itself even relies on issuances from other departments as regards the release of imported goods and commodities. For instance, the BOC released a User's Guide to the Bureau of Customs Regulated Imports List dated February 12, 2015 providing notes and guidelines on regulated imports and information on their procedures and permits . . . .

. . .

It is, therefore, not inconceivable that there already exists a separate issuance of the BOC governing the importation of reinforcement steel bars. And in accordance with 4.1.1.1 of DAO No. 5, conditional release is allowed upon "**compliance with the BOC's requirements** and any other requirements of the DTI."

9. ID.; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; VALID CLASSIFICATION; TEST OF REASONABLENESS; REQUISITES OF THE TEST.— In ***Biraogo v. The Philippine Truth Commission,*** the Court summarized the concept of equal protection, thus:

> **. . . [T]he concept of equal justice under the law requires the state to govern impartially, and it may**

not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

. . .

. . . What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.

10. ID.; ID.; ID.; ID.; THE CLASSIFICATION BETWEEN LOCALLY–MANUFACTURED AND IMPORTED GOODS IS NOT ARBITRARY AND THERE EXISTS A VALID CLASSIFICATION BETWEEN LOCAL PRODUCERS AND IMPORTERS EVEN IF THEY PRODUCE THE SAME GOODS AND COMMODITIES.— [T]here exists a valid classification between local producers and importers even though they produce the same goods and commodities.

First, there are substantial distinctions between locally produced merchandise, on one hand, and imported merchandise, on the other. For one, the former is easily accessible and available to the regulatory body for inspection and compliance whereas the latter is not. . . .

Second, the differences in testing procedures and guidelines are germane to the purpose of RA 4109 and RA 7394 in protecting consumer interest and trade and industry as a whole. . . .

On one hand, locally manufactured goods are more accessible and can more easily be regulated throughout the manufacturing process until the inspection and certification of the final product. On the other hand, imported goods are allowed to be conditionally released, not for immediate distribution, but only for temporary storage pending inspection and certification with the necessary safeguards in effect. . . .

Third, the DTI Regulations contemplate both current and future importations of commodities. . . .

Fourth, DAO No. 4 covers local and foreign companies manufacturing in the Philippines, while DAO No. 5 applies to all importers of commodities without distinction or limited application to specific companies or producers. Hence, they apply equally to all members of the same class.

The classification between locally-manufactured and imported is therefore not arbitrary.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Gatmaytan Yap Patacsil Gutierrez & Protacio for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari* seeks to reverse and set aside the following dispositions of the Regional Trial Court (RTC)-Br. 142, Makati City in Civil Case No. R-MKT-16-00874-SC, entitled "*Steelasia Manufacturing Corporation v. Department of Trade and Industry, Bureau of Product Standards, and the Bureau of Customs*:"

1. Decision[1] dated November 10, 2017 declaring as *ultra vires*, hence, without force and effect the following Regulations of the Department of Trade and Industry (DTI): a) Department Order No. 5, Series of 2008 and its Implementing Rules and Regulations and b) DTI Department Administrative Order No. 15-01, Series of 2015; and
2. Order[2] dated March 23, 2018 denying reconsideration.

---

[1] *Rollo*, pp. 12-25.

[2] *Id.* at 10-11.

Antecedents

On June 24, 2016, respondent SteelAsia Manufacturing Corporation (Steelasia) sought to nullify through a petition for declaratory relief[3] the following DTI Regulations:[4]

1. DTI Department Administrative Order No. 5, Series of 2008 (DAO No. 5);
2. Implementing Rules and Regulations (IRR) of DAO No. 5; and
3. DTI Department Administrative Order No. 15-01, Series of 2015 (DAO No. 15-01).

The following matrix shows the assailed provisions of these DTI Regulations:

DAO No. 5	IRR of DAO No. 5	DAO No. 15-01
4.1.1.1. An **importation without test report may be issued conditional release** from BOC's custody by the BPS or DTI Regional/Provincial Office, **upon importer's compliance with the BOC's requirements and any other requirements of the DTI**.	3.6 Release of Import Shipment from the Bureau of Customs shall be allowed only upon advice from BPS or from DTI/Regional/ Provincial Office through a **conditional release** or issuance of ICC or Certificate of Exemption in case of an importation which is a PS Mark License Holder.	1.4 For **applications with no valid test report/s, ICC certificate shall be issued**, however, inspection, inventory, sampling, and product testing shall be conducted prior to the release of ICC stickers.

Claiming to be a local manufacturer of steel bars, Steelasia questioned the DTI Regulations for being in conflict with

---

[3] *Id.* at 139-165.

[4] Steelasia also sought to nullify the Implementing Guidelines for the Mandatory Certification of Steel Bars Covered by Philippine National Standards (PNS) 49:2002, but only insofar as it refers to DAO No. 5, its implementing rules, and DAO 15-01.

Republic Act No. 4109[5] (RA 4109) and violative of the equal protection clause.

Specifically, the DTI Regulations allowing the **conditional release** of imported merchandise from the Bureau of Customs (BOC) premises prior to compliance with the required testing, inspection, and clearance are purportedly in conflict with the command of RA 4109 that only those which have been tested, inspected, and certified may be released, thus:

> Section 3. **The Bureau shall have charge of the establishment of standards for, and inspection of, all agricultural, forest, mineral, fish, industrial and all other products of the Philippines** for which no standards have as yet been fixed by law, executive order, rules and regulations; and **the inspection and certification of the quality of commodities imported into the Philippines**, to determine the country of origin of the articles which are the growth, raw materials, manufacture, process, or produce, and **to determine if they satisfy the buyer's or importer's requirements or specifications for domestic consumption**; x x x
>
> x x x x
>
> (d) **Before any commodity imported into the Philippines is discharged and/or released by the Bureau of Customs, to inspect such commodity in order to sample and determine the country of origin where the articles are the growth, raw materials, manufacture, process or produce, and to certify that, the whole shipment satisfies local buyer's importer's requirements as to kind, class, grade, quality or standard which may be indicated on the corresponding customs or shipping papers or commercial documents**: *Provided, However*, That imports which are not shown to be covered by, or do not conform to, buyer's or importer's requirements, shall be labelled or stamped conspicuously with the caption "do not conform to buyer's or importer's specifications": *Provided, further*, That imports of any article which are the growth, raw materials, manufacture, process or produce of countries wherein the Philippines has no trade agreement shall be confiscated and/or seized at the disposal of the government.

---

[5] An Act to Convert the Division of Standards under the Bureau of Commerce into a Bureau of Standards, to Provide for the Standardization and/or Inspection of Products and Imports of the Philippines and for Other Purposes.

x x x x

Section 6. **No customs export entry, import entry, declaration, release certificate, manifest, clearance, import permit, or permit to ship abroad and/or discharge shall be issued for any of the products within the purview of Section three of this Act and/or imported commodity, unless it is first inspected in accordance with provisions of sub-sections (b), (c), (d), and/or (e) of Section four of this Act. x x x x (Emphasis supplied)**

Steelasia further claims that the DTI Regulations are violative of the equal protection clause for they allow the conditional release of merchandise to international manufacturers and importers pending compliance with the testing, inspection, and clearance requirements while local manufacturers are not given the same privilege. This differential treatment does not rest on substantial distinctions and is not in any way germane to the purpose of the law.[6]

By *Comment*[7] dated September 16, 2016, DTI, through the Office of the Solicitor General (OSG) essentially riposted:

The DTI Regulations allow the conditional physical release of the merchandise only for the purpose of moving them from the heavily congested BOC premises into a suitable, safe, secure and accredited warehouse or storage area where the merchandise shall be stored and continue to be within the control of DTI pending the required product testing and clearance. This provisional measure is compelled by the extremely limited space in the BOC premises, significant increase in the volume of clearance applications and test reports to be evaluated by the Bureau of Product Standards (BPS), consequent delays in shipment release, rise in storage costs, and business slowdown for both providers and consumers alike.[8]

To require the process of inspection and certification to be done prior to such conditional release is simply illogical.

---

[6] *Rollo,* pp. 158-162.

[7] *Id.* at 352-380.

[8] *Id.* at 371.

Precisely, it is the conditional release of the merchandise from the BOC premises into a suitable, safe, secure and accredited warehouse or sufficient storage space which paves the way for and makes possible the efficient, expeditious and thorough testing, inspection, and certification of the merchandise. More specific to the steel industry, conditional release is even *necessary* considering that the process of BPS testing, inspection and certification in the customs premises is highly impractical, if not impossible. For this would require the installation of highly specialized equipment and machinery in a laboratory which, at present, can only be done by the Metals Industry Research and Development Center (MIRDC) of the Department of Science and Technology (DOST) in Bicutan, Parañaque City, Metro Manila.[9]

The conditional release of merchandise for the aforesaid purpose **should not be confused with the final release of the merchandise to the market or in commerce**. It is this second type of release which definitely ought to be preceded by such testing, inspection, and certification. Surely, the process cannot be reversed.

The DTI Regulations do not violate the equal protection clause. There are substantial distinctions between imported commodities, on one hand, and locally manufactured goods, on the other. It is not true that imported commodities are given more leeway than local products. On the contrary, imported commodities undergo stricter procedures. For example, their inspection and certification are done on per Bill of Lading/Airway Bill basis. Local products, on the other hand, enjoy a wider latitude on this score. Upon compliance with the specific Philippine Standards Quality and/or Safety Certification Marks, the license issued to a local manufacturer is valid for three (3) years subject only to a minimum annual surveillance audit.[10]

---

[9] *Id.* at 373.

[10] *Id.* at 378.

The Trial Court's Ruling

By Decision[11] dated November 10, 2017, the trial court declared DAO No. 5 and its Implementing Rules and Regulations, and DAO No. 15-01, *ultra vires* and with no force and effect. The court held that the inspection of imported merchandise must precede their release, not the other way around. This is to ensure that they comply with the applicable standards before they are sold and distributed in the market. Also, the fact that there is currently only one testing center for steel bars in the country does not justify the conditional release of imported merchandise prior to testing. The BPS, after all, is required by law to have its own facilities for product testing and analysis. DTI must rely on the effective implementation of its procedures rather than cut corners in violation of the law.

As for the alleged violation of the equal protection clause, the trial court said "[it] is not ready to pronounce that locally manufactured steel bars and those imported abroad must be similarly treated."

The trial court thus disposed of the case, as follows:

> WHEREFORE, the petition is GRANTED. The court declares Department of Trade and Industry Department Order No. 5, Series of 2008 & its Implementing Rules and Regulations, and Department of Trade and Industry Department Administrative Order No. 15-01, Series of 2015, *ultra vires* and of no force and effect.
>
> The Department of Trade and Industry, Bureau of Product Standards, and the Bureau of Customs are enjoined to stringently implement Republic Act No. 4109.
>
> SO ORDERED.

By Order[12] dated March 23, 2018, the trial court denied reconsideration.

---

[11] Penned by Acting Presiding Judge Phoeve C. Meer; *id.* at 12-24.

[12] *Id.* at 91.

The Present Appeal

Invoking the Court's appellate jurisdiction over pure questions of law, the DTI and the BPS, through the OSG[13] now seek affirmative relief and pray that the foregoing dispositions be reversed and set aside.[14] The OSG reiterates its arguments before the trial court and brings to fore the power of the DTI Secretary to promulgate rules and regulations to implement the provisions of trade and industry laws for the protection of the consumers. One such law is Republic Act No. 7394 (RA 7394), the Consumer Act of the Philippines (1992) which decrees that consumer products may only be **distributed in commerce** after they shall have been tested, inspected, and certified in accordance with the DTI's quality and safety standards, thus:[15]

> ARTICLE 14. Certification of Conformity to Consumer Product Standards. — The concerned department shall aim at having consumer product standards established for every consumer product so that consumer products shall be **distributed in commerce** only **after inspection and certification** of its quality and safety standards by the department. The manufacturer shall avail of the Philippine Standard Certification Mark which the department shall grant after determining the product' s compliance with the relevant standard in accordance with the implementing rules and regulations. (Emphasis supplied in the petition)

DAO No. 5 is consistent on this point:

> 4.1.1.2 Pending the issuance of the Import Commodity Clearance, **no distribution, sale, use and/or transfer to any place other than the warehouse duly approved by the BPS/DTI Regional or Provincial Office, in whole or in part, shall be made by the importer or any person**. To ensure that no distribution, sale, use and/or transfer to any place other than the address specified in the Conditional Release,

---

[13] Solicitor General Jose C. Calida, Assistant Solicitor General Ma. Antonia Edita C. Dizon, State Solicitor I Perfecto Adelfo C. Chua Cheng, and State Solicitor I John Dale A. Ballilan.

[14] *Rollo*, pp. 29-73.

[15] Republic Act No. 7394.

the importer shall allow the BPS or authorized DTI personnel or any BPS authorized inspection body/inspector conduct verification, inspection/inventory of the import shipment. (Emphasis supplied in the petition)

So is the Implementing Rules and Regulations of DAO No. 5:

4.1.1.6.1 If the results of laboratory test disclosed product **noncompliance**, the import shipment **shall be deemed non-compliant. BPS shall disapprove the ICC application** and the importer shall be advised about the denial within fifteen (15) days after the evaluation.

x x x x

4.1.1.6.4 If both test failed to conform to the requirements of the specific standards, the importer will be advised by BPS to **re-export the products** with the provisions of the Tariff and Customs Code **or be destroyed** by appropriate agency. **Only after reassessment and subsequent product compliance shall the importer be issued ICC and be allowed by BPS to market the product**.

and DAO No. 15-01, *viz.*:

1.4 For applications with no valid test report/s, ICC certificate shall be issued, **however, inspection, inventory, sampling, and product testing shall be conducted prior to the release of ICC stickers**.

Verily, while these requirements of testing, inspection, and certification prior to release is RA 4109 (1964), this requirement must be reconciled with the provisions of the Consumer Act.[16]

Through its *Comment*[17] dated November 14, 2018, Steelasia points out that the OSG has merely rehashed its argument on the substantial distinctions between local and imported goods. Steelasia nonetheless maintains that the DTI Regulations contradict the command of RA 4109 for testing, inspection, and certification to precede any form of release of merchandise.

---

[16] *Rollo*, p. 42.

[17] *Id.* at 212-274.

Also, the OSG cannot invoke RA 7394 to govern the importation of steel bars since that law applies only to consumer services and "consumer products" including but not limited to food, drugs, cosmetics, etc. It is still RA 4109 which governs imported *non consumer products* such as ***manufacturing materials*** (steel bars included).

Further, the issuance of the DTI Regulations is defective for they were crafted by DTI alone, while Article 15 (c) decrees that regulations should be jointly promulgated with the Commissioner of Customs.[18]

Threshold Issues

First. Is a petition for declaratory relief proper to challenge the validity of the DTI Regulations?

Second. Are the DTI Regulations in conflict with RA 4109 and RA 7394, hence, should be invalidated?

Third. Are the DTI Regulations defective for having exclusively emanated from DTI, sans the involvement of the Commissioner of Customs?

Fourth. Are the DTI Regulations violative of the equal protection clause insofar as they apply only to imported merchandise but not to locally manufactured products?

Ruling

A petition for declaratory relief is an improper remedy to assail the validity of the DTI Regulations

Section 1, Rule 63 of the Rules of Court states:

Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance,

[18] c) x x x and in accordance with such regulations as the department and the Commissioner of Customs shall jointly promulgate, such product may be released from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

or any other governmental regulation may, **before breach or violation thereof** bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Municipality of Tupi v. Faustino[19] citing ***Aquino v. Municipality of Aklan***[20] elucidates on the concept of declaratory relief, *viz.*:

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, **and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute**, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.

A similar ruling was pronounced in ***Ferrer v. Bautista***,[21] ***DOTR v. PPSA***,[22] and most recently in ***Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.***[23] As the Court invariably held in these cases, the party assailing the validity of a statute or administrative issuance may only do so via declaratory relief when there has yet been no breach of the rights involved. Otherwise, the party should invoke the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution to determine whether there has been grave

---

[19] G.R. No. 231896, August 20, 2019.

[20] 744 Phil. 497, 509-510 (2014).

[21] 762 Phil. 232, 245 (2015).

[22] G.R. No. 230107, July 24, 2018.

[23] G.R. Nos. 215801 & 218924, January 15, 2020.

abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Here, declaratory relief is unavailing since Steelasia claims that its constitutional right to equal protection had already been infringed when the DTI Regulations became effective. Thus, Steelasia should have invoked instead the *certiorari* powers of the courts to nullify the alleged *ultra vires* acts. On this ground alone, the petition should have already been dismissed outright.

But the petition should not end here. In ***Diaz v. The Secretary of Finance***,[24] the Court held that it has ample power to waive technical requirements when the legal questions to be resolved are of great importance to the public. In that case, petitioners, through declaratory relief, opposed the imposition and collection of Value-Added Tax on toll fees and sought to nullify BIR Revenue Memorandum Circular No. 63-2010 which laid the groundwork for its implementation. Considering that the issue had far-reaching implications as it would have affected more than half a million motorists who use the tollways daily, the Court treated the petition for declaratory relief as one for *certiorari* although it did not strictly comply with the requirements under Rule 65 of the Rules of Court.

Similarly, the petition for declaratory relief filed here, though improper, must also be treated as a petition for *certiorari* for the Court to decide the case on the merits and lay the issues to rest. As in ***Diaz***, the present case also poses far-reaching implications on public welfare. For importation affects not only private businesses involved in trade; it also impacts the national economy which stands to gain or lose significantly depending on the government policy which the Court would uphold. Too, the processes of the DTI would affect the end-users and consumers who will ultimately shoulder the real costs of inefficiency. For these reasons, the Court resolves to treat the petition below as a petition for *certiorari* and shall proceed to decide the case on the merits.

---

[24] 669 Phil. 371, 383-384 (2011).

The DTI Regulations do not violate the command of RA 4109

The doctrine of in *pari materia* requires that statutes on the same subject be construed together because legislative enactments are supposed to form part of one uniform system. More, the legislature is supposed to have in mind the existing legislations in the passage of its acts. Thus, later statutes are deemed supplementary or complementary to earlier enactments.[25]

Notably, RA 4109 is not the sole statute governing the testing, inspection, and certification requirements implemented by the DTI on imported goods. RA 7394 or the Consumer Act also covers the same requirement.

To recall, the text of RA 4109 reads:

Sec. 3. The Bureau **shall have charge of the establishment of standards for, and inspection** of, all x x x industrial and all other products of the Philippines for which no standards have as yet been fixed by law, executive order, rules and regulations; **and the inspection and certification of the quality of commodities imported into the Philippines**, to determine the country of origin of the articles which are the growth, raw materials, manufacture, process, or produce, **and to determine if they satisfy the buyer's or importer's requirements or specifications for domestic consumption**; and to prohibit the discharge and/or release of any article which are the growth, raw materials, manufacture, process, or produce of countries without trade relations with the Philippine government. Physical, biological and/or chemical tests or analyses necessary for the examination of products under the provisions of this Act may be undertaken in any branch of the Government having facilities for the purpose until such time as the Bureau may have its own facilities.

Sec. 4. Subject to the general supervision and control of the Secretary of Commerce and Industry, the Director of Standards **shall possess the general powers** conferred by law upon Bureau Chiefs, and the following specific powers and duties which he may perform personally or through his duly authorized representatives:

x x x x

---

[25] *Co v. Civil Register of Manila*, 467 Phil. 904, 913 (2004).

(d) **Before any commodity imported into the Philippines is discharged and/or released by the Bureau of Customs, to inspect such commodity** in order to sample and determine the country of origin where the articles are the growth, raw materials, manufacture, process or produce, **and to certify** that, the whole shipment satisfies local buyer's importer's requirements as to kind, class, grade, quality or standard which may be indicated on the corresponding customs or shipping papers or commercial documents: provided, however, that imports which are not shown to be covered by, or do not conform to, buyer's or importer's requirements, shall be labelled or stamped conspicuously with the caption "do not conform to buyer's or importer's specifications": provided, further, that imports of any article which are the growth, raw materials, manufacture, process or produce of countries wherein the Philippines has no trade agreement shall be confiscated and/or seized at the disposal of the government.

On the other hand, Article 14 of RA 7394 states:

ARTICLE 14. Certification of Conformity to Consumer Product Standards. — The concerned department shall aim at having consumer product standards established for every consumer product so that **consumer products shall be distributed in commerce only after inspection and certification of its quality and safety standards by the department**. The manufacturer shall avail of the Philippine Standard Certification Mark which the department shall grant after determining the product's compliance with the relevant standard in accordance with the implementing rules and regulations.

Verily, there is no substantial difference between the **texts of RA 4109 and RA 7394** insofar as they **require prior testing, inspection, and certification of product quality and safety as conditions *sine qua non* to the release of imported merchandise to the market or in commerce**. This requirement is **intended to prevent substandard products from getting released to the market and eventually falling into the hands of innocent consumers regardless of the nature of the merchandise, whether they be consumer's products or services or otherwise**. On this score, the distinction being raised by Steelasia as to the kind of imported products governed by RA 4109, on one hand, and those by RA 7394, on the other, has no bearing at all on the required testing, inspection, and

certification of product quality and safety prior to the release of any kind of imported products to the market or in commerce. Both laws are in *pari materia* and ought to be applied together on **all** imported merchandise.

This brings us back to the comparative matrix of the assailed DTI Regulations. Note that ICC stands for Import Commodity Clearance, *viz.*:

DAO No. 5	DAO No. 5 IRR	DAO No. 15-01
4.1.1.1 An **importation without test report may be issued conditional release from BOC's custody** by the BPS or DTI Regional/Provincial Office, **upon importer's compliance with the BOC's requirements and any other requirements of the DTI**. 4.1.1.2 **Pending the issuance of the Import Commodity Clearance, no distribution, sale, use and/or transfer to any place other than the warehouse duly approved** by the BPS/ DTI Regional or Provincial Office, in whole or in part, shall be made by the importer or any person. To ensure that no distribution, sale, use and/or transfer to any place other than the address specified in the Conditional Release, the importer shall allow the BPS or authorized DTI personnel or any BPS authorized inspection	3.6 Release of Import Shipment from the Bureau of Customs shall be allowed only upon advice from BPS or from DTI/ Regional/ Provincial Office through a **conditional release** or issuance of ICC or Certificate of Exemption in case of an importation which is a PS Mark License Holder. x x x x 4.1.1.6.1 If the results of laboratory test disclosed product **noncompliance**, the import shipment **shall be deemed non-compliant. BPS shall disapprove the ICC application** and the importer shall be advised about the denial within fifteen (15) days after the evaluation. x x x x 4.1.1.6.4 If both test failed to conform to the requirements of the specific standards, the	1.4 For applications with no valid test report/ s, ICC certificate shall be issued, however, **inspection, inventory, sampling, and product testing shall be conducted *prior* to the release of ICC stickers**.

body/inspector conduct verification, inspection/inventory of the import shipment.	importer will be advised by BPS to **re-export the products** with the provisions of the Tariff and Customs Code **or be destroyed** by appropriate agency. **Only after reassessment and subsequent product compliance shall the importer be issued ICC and be allowed by BPS to market the product.**	

An implementing rule or regulation is a valid exercise of subordinate legislation if it complies with the following parameters:

[T]he "delegation of legislative power to various specialized administrative agencies is allowed in the face of increasing complexity of modern life." In *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*:

> Given the volume and variety of interactions involving the members of today's society, it is doubtful if the legislature can promulgate laws dealing with the minutiae aspects of everyday life. Hence, the need to delegate to administrative bodies, as the principal agencies tasked to execute laws with respect to their specialized fields, the authority to promulgate rules and regulations to implement a given statute and effectuate its policies.

For a valid exercise of delegation, this Court enumerated the following requisites:

> All that is required for the valid exercise of this power of subordinate legislation is that **the regulation must be germane to the objects and purposes of the law**; and that **the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law**. Under the **first test** or **the so-called completeness test, the law must be complete in all**

> **its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it**. The **second test** or the **sufficient standard test**, mandates that **there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot**.

Simply put, **what are needed for a valid delegation are: (1) the completeness of the statute making the delegation; and (2) the presence of a sufficient standard.**

To determine completeness, all of the terms and provisions of the law must leave nothing to the delegate except to implement it. "What only can be delegated is **not the discretion to determine what the law shall be** but **the discretion to determine how the law shall be enforced**."

More relevant here, however, is the presence of a sufficient standard under the law. Enforcement of a delegated power may only be effected in conformity with a **sufficient standard**, which is used **"to map out the boundaries of the delegate's authority and thus 'prevent the delegation from running riot.'"** The **law must contain the limitations or guidelines to determine the scope of authority** of the delegate.[26] (Emphasis supplied)

The rule-making power of the DTI is found in Section 2 of EO No. 293 (1993):

SECTION 2. Implementing rules and regulations. — The Minister may promulgate rules and regulations to implement the provision and intent of "trade and industry laws." This power shall extend to the implementation of the objectives, policies, international agreements, international grants, and the approved plans, projects, and activities of the Ministry.

The standards relevant to the present case are found in Section 14 of RA 7394 and Section 4 (d) of RA 4109 (1967) as above-quoted.

---

[26] *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, citations omitted.

Here, not only are the aforementioned provisions **complete** in their respective terms, but each of them also contains sufficient **standards** for the DTI to determine **how the ICC requirement shall be processed**, including the **preparatory steps for the discharge of this particular duty** such as where the imported products shall be stored in the meantime. While this is not expressly stated in the statutes, this is **necessarily implied** from the **principal mandate** given to the DTI for the issuance or non-issuance of the ICC. The DTI does not have to do anything except implement the provisions based on the standards and limitations provided by the statutory provisions, the **details of such implementation** being left of necessity to the DTI to determine.

The present challenge focuses on Section 4.1.1.1 of DAO No. 5 allowing **conditional release** from BOC's custody of imported goods that have yet to be tested, inspected, and certified provided the importer shall have already complied with the BOC's requirements and any other requirements of the DTI. To emphasize, it is a **mere preparatory step** to the **principal mandate** for the ICC issuance or denial, a portion of the **detail** in the **implementation** of Section 15 of RA 7394 and Section 4 (d) of RA 4109. The purpose is to provide swift and effective solutions to the very real problems of delays in shipment release, port congestion, and storage costs brought about by the increasing importations *vis-a-vis* the rapidly developing global industry.

As aptly argued by the OSG, **conditional release** does **not** pertain to the **release of imported goods to the market or in commerce**, but only to its **physical transfer or movement from the BOC premises to a suitable, secure, safe, and accredited warehouse or storage space pending compliance with the requisite testing, inspection, and certification**. These procedures shall no longer be performed within the congested BOC premises but in the testing center or laboratory using samples from the materials that are safely secured in the storage facility pending clearance of all the necessary approvals.

It is not true that **the conditional release of the merchandise from the BOC premises to a suitable, safe, and secure**

accredited warehouse or storage space effectively skips the requirements of testing, inspection, and clearance under RA 4109. On the contrary, it paves the way for an efficient, convenient, and expeditious process of testing, inspection, and certification of the merchandise. It thus ensures that only those imported goods that have passed the DTI's standard of safety and quality are released to the market for sale, disposition, or distribution to consumer.

Insofar as the steel industry is concerned, conditional release is imperative since doing the BPS inspection and certification right inside the customs premises is highly impractical, if not impossible primarily due to its limited space. Not only that. Since the prescribed procedure requires the installation of highly specialized equipment and machinery in a laboratory, at present, it can only be done by the lone testing center for steel bars in the country, the MIRDC of the DOST inside its laboratory in Bicutan.[27]

To be sure, **Steelasia itself does not deny that the DTI's policy of allowing the conditional release of imported merchandise was impelled by considerations of convenience and efficiency**. It does not deny either that the BOC premises are highly congested. Nor does it deny that there is only one testing facility (MIRDC) servicing all demands for testing, inspection, and certification of steel bars and that conducting an actual and thorough testing in the congested BOC premises is extremely difficult as it even affects the quality of the testing process. Notably, the trial court opined that it is the government's duty to provide a testing facility within the BOC area itself. But for this facility to get constructed, the government has to reckon with several factors such as the availability of funds, space, manpower, among others. Meantime, the government has to deal with the fact that there is but a single testing center available in the country which, much as it wants to, cannot do the testing and inspection on all shipments inside the BOC premises all at the same time.

---

[27] *Rollo*, p. 373.

The assailed DTI Regulations thus puts context to the conditional release of merchandise, *viz.*:

5.1 Upon issuance of Conditional Release, the importer shall allow BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector **to secure the warehouse where the subject shipment are stored in order to ensure that the same is intact prior to the approval/denial of the Import Commodity Clearance being applied for**.

5.2 In case the warehouse contains only the subject shipment, the BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector **shall padlock the warehouse in a manner that only the said authorized personnel shall have access thereon and with the knowledge of the importer**.

5.3 In case the warehouse contains products/materials other than the subject shipment, the subject shipment shall be **securely sealed in an appropriate manner** by the BPS or authorized DTI Regional/ Provincial personnel or any BPS authorized inspection body/inspector. **The importer shall ensure that the sealed shipment shall not be altered/moved/transferred without the knowledge of BPS or DTI Regional/Provincial Office**.

5.4 The BPS or DTI Regional Office may institute **any other measures to prevent any further action that undermine the purpose of these provisions**.[28]

6. PRODUCT IDENTIFICATION AND TRACEABILITY

6.1 To establish product identification and traceability of the shipment, importers are required to declare and submit the list of batch/serial numbers of each individual product of the lot/batch being imported. It shall likewise be one of the bases for the issuance of the ICC.

6.2 Importers shall ensure that the imported products are properly labeled as to the product identification and traceability of the production lot/batch.

(Emphases supplied)

x x x x

[28] *Id.* at 369-370.

Based thereon, the warehouse or storage area where the imported items are physically transferred will be padlocked, limiting access thereto to authorized personnel only. Also, the shipment shall be sealed prior to testing, inspection, and certification for the purpose of ensuring against any alteration, movement, or transfer thereof without the knowledge of BPS or DTI. Finally, the BPS and the DTI are authorized to institute additional measures to maintain the integrity of this process.

Clearly, while the imported goods may have been released from the **physical** custody of the BOC to an accredited warehouse, their security and integrity are nevertheless preserved. Similar to the judicial concept of *custodia legis* over items in litigation, the DTI retains control over the imported commodities to ensure that substandard materials are not altered, sold, transferred, or used at any given time prior to compliance with the requirements of testing, inspection and certification. Consequently, it cannot be said that the assailed issuances are arbitrary or contrary to the intent and spirit of the law.

Whether this rule is wise or unwise, the Court does not delve into the policy behind the rule.[29] It is enough that Executive Order No. 293 has validly delegated the power to promulgate rules to the DTI and the standards and limitations are set forth in Section 15 of RA 7394 and Section 4 (d) of RA 4109. It is within the scope of the DTI's power to determine the preparatory process for the ICC requirement whose requirements are clearly laid out in the law.

There is no requirement for the DTI Regulations to be jointly promulgated with the Commissioner of Customs

Steelasia, nevertheless, argues that the DTI Regulations are defective, crafted as they were by DTI alone. This supposedly violates Article 15 (c) of RA 7394 which decrees that regulations should be jointly promulgated "with the Commissioner of Customs."

---

[29] *Garcia v. Drilon*, 712 Phil. 44 (2013).

We are not convinced.

For one, Steelasia takes Article 15 (c) of RA 7394 out of context. A full reproduction of the provision is apropos:

ARTICLE 15. Imported Products. — a) Any consumer product offered for importation into the customs of the Philippine territory shall be refused admission if such product:

1) fails to comply with an applicable consumer product quality and safety standard or rule;

2) is or has been determined to be injurious, unsafe and dangerous;

3) is substandard; or

4) has material defect.

b) Samples of consumer products being imported into the Philippines in a quantity necessary for purposes of determining the existence of any of the above causes for non-admission may be obtained by the concerned department or agency without charge from the owner or consignee thereof. The owner or consignee of the imported consumer product under examination shall be afforded an opportunity to a hearing with respect to the importation of such products into the Philippines. If it appears from examination of such samples or otherwise that an imported consumer product does not conform to the consumer product safety rule or its injurious, unsafe and dangerous, is substandard or has a material defect, such product shall be refused admission unless the owner or the consignee thereof manifests under bond that none of the above ground for non-admission exists or that measures have been taken to cure them before they are sold, distributed or offered for sale to the general public.

Any consumer product, the sale or use of which has been banned or withdrawn in the country of manufacture, shall not be imported into the country.

c) If it appears that any consumer product which may not be admitted pursuant to paragraph (a) of this Article can be so modified that it can already be accepted, the concerned department may defer final determination as to the admission of such product for a period not exceeding ten (10) days, and in accordance with such regulations as the department and the Commissioner of

Customs shall jointly promulgate, such product may be released from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product. (Emphasis supplied)

Verily, Article 15 (c) of RA 7394 covers situations wherein the imported goods have already undergone testing and failed the mandatory product standards. In such a case, the goods may still be released for a maximum of ten (10) days for the limited purpose of alteration or modification to make them compliant. This is the only instance where the joint promulgation of rules by the DTI and the BOC is required under Article 15. It does not contemplate scenarios wherein imported goods are simply moved to a warehouse or storage area before they are sent to testing facilities.

As stated, the law requires the DTI and the BOC to jointly promulgate rules only in cases where the alteration or modification of the imported goods may be allowed. And rightly so since the integrity of the imported goods would no longer be preserved in such cases. To repeat, as with any other property in *custodia legis*, imported goods pending clearance may not be altered or modified without the imprimatur and compliance with rules of the agency having custody over them.

At any rate, joint promulgation of rules does not require that the parties signify their concurrence in the same document. For instance, the BOC issued CMC 99-2017[30] dated July 7, 2017 specifying the documents to be submitted to facilitate the physical release of imported cement pending compliance with the required testing, inspection and certification. This is in response to DTI DAO No. 17-05, s. 2017 on the guidelines for the mandatory certification of cement products.

More, the BOC itself even relies on issuances from other departments as regards the release of imported goods and commodities. For instance, the BOC released a User's Guide

---

[30] Available at https://customs.gov.ph/wp-content/uploads/2017/07/CMC_99-2017-DTI-New-Policy-in-Processing-Import-Commodity-Clearance.pdf, last accessed on November 10, 2020, 9:00PM.

to the Bureau of Customs Regulated Imports List dated February 12, 2015[31] providing notes and guidelines on regulated imports and information on their procedures and permits, *viz.*:

B.

x x x x

4. **Some products are regulated by more than one agency.** (In compiling the Regulated Imports List, products for which an Authority to Release Imported Goods (ATRIG) issued by the Bureau of Internal Revenue is required are considered regulated imports, and the Bureau of Internal Revenue is considered a regulating agency). **If a particular import requires a permit or permits from more than one agency, that will be shown in the columns for Regulating Agency 2 (column H) and Regulating Agency 3 (column K)**.

5. In some cases, a product can be regulated by either of two agencies depending not on what the product is, but what it will be used for. An example of this is "Food Supplements — for Humans or Animals." In cases such as this, an explanation of what is required to be presented for Customs clearance is shown in the column Notes (column N).

6. **In general, whether a product is regulated depends on what it is**. In some cases, however, the specific rules which determine whether a product can be imported or whether the product is a regulated import depend on who is importing the product or for what purpose the product will be used. **x x x**

(Emphases supplied)

It is, therefore, not inconceivable that there already exists a separate issuance of the BOC governing the importation of reinforcement steel bars. And in accordance with 4.1.1.1 of DAO No. 5, conditional release is allowed upon "**compliance with the BOC's requirements** and any other requirements of the DTI."

---

[31] Available at http://www.customs.gov.ph/wp-content/uploads/2015/02/Users-Guide-to-Bureau-of-Customs-Regulated-Imports-List-2015-02-12-2.pdf; last accessed September 3, 2020, 11:50am.

In fine, the trial court gravely erred when it peremptorily nullified the DTI Regulations due to their alleged inconsistency with RA 4109. As stated, there is no inconsistency to speak of. The "release" of imported goods to the market or in commerce under RA 4109 and RA 7394 is not the same as the conditional physical release and transfer of the goods from the BOC premises to a suitable, secure, safe, and accredited warehouse or storage space accessible only to authorized DTI persons.

The DTI Regulations do not violate the Equal Protection Clause

Steelasia asserts that the DTI regulations violate the equal protection clause for favoring imported steel bars with the conditional release procedures under DAO No. 5 while the locally manufactured counterparts have to strictly comply with the same standards outlined in DAO No. 4.

We are not persuaded.

In ***Biraogo v. The Philippine Truth Commission***,[32] the Court summarized the concept of equal protection, thus:

"According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed." It **"requires public bodies and institutions to treat similarly situated individuals in a similar manner."** "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities." **"In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."**

x x x x

x x x What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must

[32] 651 Phil. 374, 458-459 (2010).

pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. (Emphases supplied, citations omitted)

Here, there exists a valid classification between local producers and importers even though they produce the same goods and commodities.

First, there are substantial distinctions between locally produced merchandise, on one hand, and imported merchandise, on the other. For one, the former is easily accessible and available to the regulatory body for inspection and compliance whereas the latter is not. In fact, DTI can only rely on documents issued by the importers' foreign counterparts. For another, local manufacturers can access and closely monitor local channels of distribution more easily, while importers have to go through the tedious importation process before they could do so.

Second, the differences in testing procedures and guidelines are germane to the purpose of RA 4109 and RA 7394 in protecting consumer interest and trade and industry as a whole. To recall, these statutes essentially prevent substandard goods from being distributed to the market and eventually used or consumed by consumers. The different procedures recognize and address the different logistical needs and concerns of local manufacturers and importers alike.

On one hand, locally manufactured goods are more accessible and can more easily be regulated throughout the manufacturing process until the inspection and certification of the final product. On the other hand, imported goods are allowed to be conditionally released, not for immediate distribution, but only for temporary storage pending inspection and certification with the necessary safeguards in effect. Without this flexibility of conditional release, docks and BOC facilities at importation points would easily clog and impede trade and industry in general. The existing safeguards also prevent the possibility of loosely granting certifications if only to clear the docks and facilities. Indeed, these differences are germane to the purpose of protecting trade and industry.

Third, the DTI Regulations contemplate both current and future importations of commodities. In fact, the inspection and certification procedures under DAO No. 5 are on per shipment per Bill of Lading basis. Also, the assailed regulations take future amendments of the guidelines into consideration in view of the rapid developments in trade and industry.

Fourth, DAO No. 4 covers local and foreign companies manufacturing in the Philippines, while DAO No. 5 applies to all importers of commodities without distinction or limited application to specific companies or producers. Hence, they apply equally to all members of the same class.

The classification between locally-manufactured and imported is therefore not arbitrary.

Indeed, the DTI Regulations are vital cogs to a grand scheme of administrative machinery without which the bureaucracy might be hampered if not stalled. The growing complexities of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law have come to fore, calling for the need to exercise the vested discretion in administrative agencies and departments, and the promulgation of rules and regulations calculated to promote public interest, which the DTI here has validly so exercised within its delegated rule-making power.[33]

ACCORDINGLY, the petition is **GRANTED**. The Decision dated November 10, 2017, and Order dated March 23, 2018, of the Regional Trial Court, Branch 142, Makati City are **REVERSED** and **SET ASIDE**. Department of Trade and Industry Department Administrative Order No. 5, Series of 2008 and its Implementing Rules and Regulations, and DTI Department Administrative Order No. 15-01, Series of 2015 are not *ultra vires*, nor illegal or unconstitutional.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo, Lopez,* and *Rosario, JJ.*, concur.

---

[33] *Calalang v. Williams*, 70 Phil. 726, 732-734 (1940).

THIRD DIVISION

[G.R. No. 240421. November 16, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **LORETO TALMESA[*] *y* BAGAN,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES ARE GENERALLY ACCORDED RESPECT ON APPEAL, SINCE THE TRIAL JUDGE IS IN A BETTER POSITION TO OBSERVE THE WITNESSES' DEPORTMENT WHILE TESTIFYING.— Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial. The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.

After a judicious perusal of the records of the instant appeal, the Court finds no compelling reason to depart from the uniform factual findings of the RTC and the CA. The Court affirms accused-appellant's conviction.

. . .

[*] Spelled as Talmeza in some parts of the Records.

The RTC, as affirmed by the CA, found AAA'S testimony credible. The Court finds no reason to rule otherwise considering that AAA's narration is clear, spontaneous, and straightforward.

2. CRIMINAL LAW; RAPE, ALL THE ELEMENTS THEREOF WERE ESTABLISHED IN THE CASE AT BAR.— Accused-appellant is indicted for rape under paragraph 1, Article 266-A of the RPC, as amended . . . .

. . .

Under paragraph 1(a), Article 266-A, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. Here, the prosecution had established beyond moral certainty these elements.

AAA categorically asserted that accused-appellant inserted part of his penis into her vagina. Evidence further reveals that accused-appellant employed force to satisfy his lust as evinced by the following: AAA vividly recalled that accused-appellant dragged her towards the middle of the rice field and while she was on the ground, accused-appellant punched her on her face, head, neck, abdomen, and lower parts of her body. Her statements were corroborated by the medical findings of Dr. Quinton, who testified that AAA suffered multiple abrasions on her face and neck; contusions on her upper lip, nose and left check; and conjunctival hemorrhage in both eyes.

3. ID.; ID.; REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES; THE VICTIM'S CREDIBILITY AS A WITNESS IS NOT IMPAIRED WHEN THE INCONSISTENCIES IN THE TESTIMONY REFER TO MINOR DETAILS WHICH ARE IRRELEVANT TO THE ELEMENTS OF THE CRIME.— There are no material inconsistencies in AAA's statements. While AAA may not have been able to move her entire body when accused-appellant dragged her to the rice field, it is not impossible for her to turn her head and see accused-appellant's face. As testified by AAA, she was able to see accused-appellant's face through the light from her cellphone when she turned her head while being dragged by accused-appellant to the rice field.

Moreover, it is inconsequential that AAA did not mention during the direct examination that accused-appellant made push

and pull movements. What is material is that AAA categorically testified that accused-appellant was able to forcibly insert part of his penis into her vagina.

Certainly, the claimed inconsistencies in AAA's testimony are not of a nature that would impair AAA's credibility as a witness. They do not touch upon the elements of the crime of Rape. They are minor details which are irrelevant to the elements of the crime and cannot be considered grounds for accused-appellant's acquittal.

4. ID.; ID.; ID.; ID.; ID.; ID.; INCONSISTENCIES IN A RAPE VICTIM'S TESTIMONY ARE EXPECTED, FOR A RAPE VICTIM CANNOT BE PRESUMED TO GIVE AN ACCURATE ACCOUNT OF THE TRAUMATIC AND HORRIFYING EXPERIENCE.— [I]naccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. Such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.

5. ID.; ID.; ID.; ID.; ID.; TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT, FOR YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— [T]estimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. No young woman would admit that she was raped, make public the offense and allow the examination of her private parts, undergo the troubles and humiliation of a public trial and endure the ordeal of testifying to all the gory details, if she had not in fact been raped.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ANY ALLEGED IRREGULARITY IN THE ARREST IS DEEMED WAIVED WHEN THE ACCUSED FAILS TO

RAISE IT BEFORE ARRAIGNMENT.— Records show that the police officers merely invited accused-appellant to go with them and that he voluntarily agreed. This was corroborated by accused-appellant's wife, who testified that accused-appellant freely went with the police officers to the police station.

Also, even *in gratia argumenti* that the arrest was illegal, the objection to the illegality of the arrest has already been waived.

. . .

In the case at bench, accused-appellant went into arraignment, pleaded not guilty, and actively participated in the trial. He only raised the issue of the validity of his arrest before the CA. He never questioned the legality of his arrest before the arraignment. He is, therefore, deemed to have waived any alleged irregularity in his arrest when he submitted himself to the jurisdiction of the court through his counsel-assisted plea during his arraignment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

INTING, *J.*:

This is an appeal[1] from the Decision[2] dated April 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01666-MIN. The assailed CA Decision affirmed the Decision[3] dated January 17, 2017 of Branch 26, Regional Trial Court (RTC),

---

[1] See Notice of Appeal dated May 16, 2018, *rollo*, pp. 17-18.

[2] *Id.* at 3-16; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring.

[3] CA *rollo*, pp. 52-62; penned by Acting Presiding Judge Lorenzo F. Balo.

Surallah, South Cotabato finding Loreto Talmesa *y* Bagan (accused-appellant) guilty beyond reasonable doubt of the crime of Rape under paragraph 1, Article 266-A in relation to Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353.[4]

The Antecedents

This case stemmed from an Information[5] filed before the RTC charging accused-appellant with Rape under paragraph 1, Article 266-A of the RPC, as amended, to wit:

> That on or about the 21st day of December 2011, at around 10:30 o'clock in the evening, in [redacted], Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of force and violence, have carnal knowledge of the herein victim, [AAA],[6] then seventeen (17) years old, against her will and without her consent.
>
> CONTRARY TO LAW.[7]

Accused-appellant, with the assistance of his counsel, pleaded not guilty to the charge.[8] Trial on the merits ensued.

---

[4] The Anti-Rape Law of 1997.

[5] Records, pp. 1-2.

[6] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes"; RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[7] Records, p. 1.

[8] See Order dated September 12, 2012 of Branch 26, Regional Trial Court, Surallah, South Cotabato in Criminal Case No. 5799-N, *id*. at 22.

The prosecution presented as witnesses the following: (1) AAA, the minor victim; (2) BBB, AAA's uncle; (3) Police Officer III Ronald Garcia, the investigator assigned to the case; and (4) Dr. Mila G. Quinton, MD (Dr. Quinton), the physician who examined AAA after the rape incident.[9]

AAA was 17 years old at the time of the rape incident. Accused-appellant and AAA reside in the same *barangay*. AAA is very familiar with accused-appellant because she would see him every time she goes to work.[10]

According to AAA, on December 21, 2011, at around 8:00 p.m. to 9:00 p.m., she was at the shed of [redacted] waiting for her father to fetch her. Accused-appellant asked AAA who she was waiting for; she replied that she was waiting for her father. Accused-appellant then left. As AAA's father did not arrive and it was already 10:30 p.m., AAA decided to go home. While she was walking on her way home, a person suddenly covered her mouth and pulled her from behind. She immediately turned to see the person and saw accused-appellant's face through the light coming from her cellphone that she held above her head. While accused-appellant was holding her, AAA struggled to free herself. Accused-appellant dragged her towards the middle of the rice field. As accused-appellant was much bigger, AAA struggled to free herself from accused-appellant, causing her to fall. While she was lying on the muddy ground, accused-appellant sat on her knees and repeatedly punched her on the face and lower parts of her body. AAA tried to evade the blows by covering her face, but she could not do anything.[11]

Thereafter, accused-appellant forcibly removed AAA's pants and underwear and tried to kiss her. AAA evaded accused-appellant's attempts and pushed his head away from her. Accused-appellant, who was naked at that time, spread AAA's legs and inserted a part of his penis into her vagina. AAA kept

---

[9] CA *rollo*, p. 53.

[10] *Id*. at 54-55.

[11] *Id*.

on kicking accused-appellant causing his penis to be removed from her vagina. This enraged accused-appellant. He punched her on her stomach, abdomen, head, and neck several times. AAA retaliated by biting accused-appellant's hand. She also shouted for help. Accused-appellant punched her again on the head and abdomen until she nearly lost consciousness. Then, AAA heard a motorcycle approaching the rice field making accused-appellant to run away from the scene. AAA slowly crawled her way out from the muddy rice field towards the road and asked for help. Upon reaching the road, AAA saw the motorcycle. She waved her hand and shouted for help. The persons on board the motorcycle saw her and helped her. BBB was one of the three persons on board the motorcycle. After asking AAA what happened to her, BBB gave his shawl to her to cover the lower part of her naked body. In no time, BBB brought AAA to the police station and thereafter to the hospital for treatment.[12]

Dr. Quinton, the attending physician of AAA, testified that on December 22, 2011, AAA was brought to the hospital shivering, wearing a blouse, but no lower clothes. When she examined AAA, she found the following: (1) multiple abrasions in AAA's neck and face; (2) contusion on the upper lip; (3) hemorrhages on both eyes; (4) contused abrasion on her upper *labia minora*; and (4) fresh lacerated wound in the hymen.[13]

For his part, accused-appellant denied the allegations against him. He claimed that at around 6:00 p.m. of December 21, 2011, after having dinner with his wife and one Jose Regidor, he drank half a bottle of Tanduay and went to sleep at 9:00 that evening. At around 6:00 a.m. the following day, while drinking his coffee, four police officers approached and asked him whether he noticed something odd the previous night. Accused-appellant told them that the dogs were barking that night. The police officers invited him to the police station to get his statements. He agreed and freely went with the police officers. However, he was instead

---

[12] *Id.* at 55; *rollo*, p. 5.

[13] See Medical Certificate dated December 23, 2011, records, p. 10.

brought to a hospital where he was presented before AAA who was asked whether he was the one who raped her. AAA just looked at him and sat down. AAA did not point to him as the one who raped her. The police officers told accused-appellant to board the patrol car and that they would go home. However, he was not brought home, but to the police station where one of the police officers pushed him inside the jail. Upon the instruction of a police officer, the detainees inside mauled him.[14]

The RTC Ruling

In the Decision[15] dated January 17, 2017, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of Rape as defined in paragraph 1 (a), Article 266-A of the RPC, as amended. The RTC sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to pay AAA ₱50,000.00 as civil indemnity.

Accused-appellant appealed to the CA.

The CA Ruling

On April 26, 2018, the CA affirmed *in toto* the RTC ruling.

Hence, the instant appeal.

The parties adopted their respective Appellant's and Appellee's Briefs filed before the CA as their respective Supplemental Briefs before the Court.[16]

In his appeal, accused-appellant raised the following grounds questioning his conviction before the lower courts:

1. He was unlawfully arrested without a warrant;
2. He was not positively identified by AAA; and

---

[14] CA *rollo*, pp. 56-57.

[15] *Id.* at 52-62.

[16] *Rollo*, pp. 24-26, 28-29.

3. AAA's statements were peppered with inconsistencies which when considered would have changed the judgment of the RTC.

The Court's Ruling

The appeal has no merit.

Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect.[17] Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[18] The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.[19] The task of taking on the issue of credibility is a function properly lodged with the trial court.[20] Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.

After a judicious perusal of the records of the instant appeal, the Court finds no compelling reason to depart from the uniform factual findings of the RTC and the CA. The Court affirms accused-appellant's conviction.

All the elements of the crime of rape are present.

Accused-appellant is indicted for rape under paragraph 1, Article 266-A of the RPC, as amended, which provides as follows:

---

[17] *Estrella v. People*, G.R. No. 212942, June 17, 2020.

[18] *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018, 876 SCRA 330, 338, citing *People v. De Guzman*, 564 Phil. 282, 290 (2007).

[19] *Id*., citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

[20] *Estrella v. People*, *supra* note 17, citing *People v. Villamin*, *id*.

Article 266-A. *Rape: When and How Committed*. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

   a) Through force, threat, or intimidation;

   b) When the offended party is deprived of reason or otherwise unconscious;

   c) By means of fraudulent machination or grave abuse of authority;

x x x

Under paragraph 1 (a), Article 266-A, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation.[21] Here, the prosecution had established beyond moral certainty these elements.

AAA categorically asserted that accused-appellant inserted part of his penis into her vagina.[22] Evidence further reveals that accused-appellant employed force to satisfy his lust as evinced by the following: AAA vividly recalled that accused-appellant dragged her towards the middle of the rice field[23] and while she was on the ground, accused-appellant punched her on her face, head, neck, abdomen, and lower parts of her body.[24] Her statements were corroborated by the medical findings of Dr. Quinton, who testified that AAA suffered multiple abrasions on her face and neck; contusions on her upper lip, nose and left cheek; and conjunctival hemorrhage in both eyes.[25]

The identity of accused-appellant was proven beyond reasonable doubt.

---

[21] *People v. CCC*, G.R. No. 231925, November 19, 2018.

[22] TSN, July 2, 2014, p. 35.

[23] *Id*. at 30.

[24] *Id*. at 31 and 36.

[25] TSN, February 19, 2014, p. 6.

AAA positively identified accused-appellant as her assailant; thus:

Direct Examination by Fiscal Jesse S. Villegas:

Q You know this person personally?

A Yes, sir. He is only known as Boyax. I do not know his complete name at that time.[26]

x x x x

Q How were you able to recognize the identity of the person who raped you at that time because it was dark?

A That time I was bringing with me my cell phone.

Q What is the connection of your having a cell phone to your testimony that you were able to recognize the identity of the person?

A Earlier we had a talk at the waiting shed and I was raising my cell phone on top of my head, and the light of that cell phone illuminated him, that is why I was able to recognize him.

Q That was at the waiting shed?

A Yes, sir.[27]

x x x x

Q Did you tell him who was that person who raped you?

A Yes, sir.

Q Who was that person that you told him who raped you?

A Boyax.[28]

Cross-Examination by Atty. Fermin D. Ondoy:

Q You just presumed that the person you met at the waiting shed was the same person who grabbed you from behind?

---

[26] TSN, July 2, 2014, p. 26.

[27] *Id*. at 38-39.

[28] *Id*. at 40.

A No, sir, because I already saw him at the waiting shed and when the incident happened, I also saw him.

Q At what point did you actually see him during the incident?

A After he covered by mouth, I turned my head towards him.

Q According to you, when that person grabbed you from behind, you could not move?

A Yes, sir, that was my answer earlier.

Q And when he grabbed you, your cell phone fell?

A It did not as I was still holding it.

Q You mean to say, while at the rice field you still had your cell phone at that time?

A When he pulled me towards the rice field, I was no longer holding it.[29]

x x x x

Q When was the next time you saw him again?

A I saw him next at the hospital as he was brought and presented by the policemen.[30]

The credibility of the private complainant as a witness.

Accused-appellant seeks to demolish AAA's testimony by claiming that her testimony is full of inconsistencies. He insists that AAA could not have turned her face towards him and see his face because she herself stated that the perpetrator tightly grabbed her from behind so that she could not move. Accused-appellant further contends that AAA mentioned in her sworn statement that the perpetrator allegedly made a push and pull movement. However, AAA failed to state this act during the direct examination. Thus, according to accused-appellant, AAA's statements are incredible.

---

[29] *Id*. at 45-46.

[30] *Id*. at 53.

The Court is not convinced.

There are no material inconsistencies in AAA's statements. While AAA may not have been able to move her entire body when accused-appellant dragged her to the rice field, it is not impossible for her to turn her head and see accused-appellant's face. As testified by AAA, she was able to see accused-appellant's face through the light from her cellphone when she turned her head while being dragged by accused-appellant to the rice field.[31]

Moreover, it is inconsequential that AAA did not mention during the direct examination that accused-appellant made push and pull movements. What is material is that AAA categorically testified that accused-appellant was able to forcibly insert part of his penis into her vagina.

Certainly, the claimed inconsistencies in AAA's testimony are not of a nature that would impair AAA's credibility as a witness. They do not touch upon the elements of the crime of Rape. They are minor details which are irrelevant to the elements of the crime and cannot be considered grounds for accused-appellant's acquittal.

Besides, inaccuracies and inconsistencies are expected in a rape victim's testimony.[32] Rape is a painful experience which is oftentimes not remembered in detail.[33] Such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[34]

---

[31] *Id*. at 44-46.

[32] *People v. Agalot*, 826 Phil. 541, 559 (2018).

[33] *Id*.

[34] *People v. Pareja*, 724 Phil. 759, 774 (2014), citing *People v. Saludo*, 662 Phil. 738, 753 (2011).

The RTC, as affirmed by the CA, found AAA's testimony credible. The Court finds no reason to rule otherwise considering that AAA's narration is clear, spontaneous, and straightforward.

Furthermore, testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[35] Youth and immaturity are generally badges of truth and sincerity.[36] No young woman would admit that she was raped, make public the offense and allow the examination of her private parts, undergo the troubles and humiliation of a public trial and endure the ordeal of testifying to all the gory details, if she had not in fact been raped.[37]

Accused-appellant's assertion of unlawful arrest.

Accused-appellant argues that his warrantless arrest when he was brought to the hospital by the police officers is illegal.

The Court is not persuaded.

Records show that the police officers merely invited accused-appellant to go with them and that he voluntarily agreed.[38] This was corroborated by accused-appellant's wife, who testified that accused-appellant freely went with the police officers to the police station.[39]

Also, even *in gratia argumenti* that the arrest was illegal, the objection to the illegality of the arrest has already been waived. In *Lapi v. People*[40] the Court said:

---

[35] *People v. ABC*, G.R. No. 244835, December 11, 2019, citing *People v. Alberca*, 810 Phil. 896, 906 (2017).

[36] *People v. Deliola*, 794 Phil. 194, 208 (2016), citing *People v. Suarez*, 750 Phil. 858, 869 (2015).

[37] *Id.*, citing *People v. Nical*, 754 Phil. 357, 369 (2015).

[38] TSN, October 30, 2014, p. 13.

[39] TSN, November 6, 2014, pp. 12-13.

[40] G.R. No. 210731, February 13, 2019.

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.[41]

In the case at bench, accused-appellant went into arraignment, pleaded not guilty, and actively participated in the trial. He only raised the issue of the validity of his arrest before the CA. He never questioned the legality of his arrest before the arraignment. He is, therefore, deemed to have waived any alleged irregularity in his arrest when he submitted himself to the jurisdiction of the court through his counsel-assisted plea during his arraignment.

Penalty and damages.

The RTC and the CA correctly imposed the penalty of *reclusion perpetua* in accordance with paragraph 1 (a), Article 266-A in relation to Article 266-B of the RPC, as amended.

However, to conform with jurisprudence, the Court increases the amount of civil indemnity to ₱75,000.00.[42] The Court further awards to AAA moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱75,000.00.[43]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated April 26, 2018 of the Court of Appeals in CA-G.R. CR-

---

[41] *Id*., citing *People v. Alunday*, 586 Phil. 120, 133 (2008).

[42] *People v. Jugueta*, 783 Phil. 806, 826 (2016).

[43] *Id*.

HC No. 01666-MIN is **AFFIRMED** with **MODIFICATIONS** in that accused-appellant Loreto Talmesa *y* Bagan is **ORDERED** to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. The amount of damages awarded shall earn legal interest at the rate of 6% *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Delos Santos,* and *Rosario, JJ.*, concur.

SECOND DIVISION

[G.R. No. 247575. November 16, 2020]

PEOPLE OF THE PHILIPPINES, *Petitioner, v.* **EDWIN REAFOR *y* COMPRADO,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; MERITORIOUS CASES, THE HIGHER DEMANDS OF SUBSTANTIAL JUSTICE MUST TRANSCEND THE RIGID OBSERVANCE OF PROCEDURAL RULES.— At the outset, the CA correctly pointed out that the petition filed before it suffers from procedural defects, in that no prior MR was filed before the RTC, and that the same was filed out of time. Nonetheless, there have been numerous cases wherein the Court disregarded procedural lapses in order to resolve a case on the merits. In this regard, case law instructs that "the rules of procedure need not always be applied in a strict technical sense, since they were adopted to help secure and not override substantial justice. 'In ***clearly meritorious cases***, the higher demands of substantial justice must transcend rigid observance of procedural rules.'"

2. ID.; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; PLEA BARGAINING; PLEA BARGAINING IS A GIVE-AND-TAKE NEGOTIATION WHEREIN BOTH THE PROSECUTION AND THE DEFENSE MKE CONCESSIONS IN ORDER TO AVOID POTENTIAL LOSSES.— Plea bargaining to a lesser offense is governed by Section 2, Rule 116 of the Revised Rules of Criminal Procedure . . . .

. . .

"Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in

return for a lighter sentence than that for the graver charge." Essentially, it is a give-and-take negotiation wherein both the prosecution and the defense make concessions in order to avoid potential losses. The rules on plea bargaining neither creates nor takes away a right; rather, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

3. ID.; ID.; ID.; ID.; REQUISITES OF PLEA BARGAINING; A DEFENDANT HAS NO CONSTITUTIONAL RIGHT TO PLEA BARGAIN, AND THE ACCEPTANCE OF AN OFFER TO PLEAD GUILTY IS NOT A DEMANDABLE RIGHT, BUT DEPENDS ON THE CONSENT OF THE OFFENDED PARTY AND THE PROSECUTOR.— [I]t is well to clarify that "a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but ***depends on the consent of*** the offended party and ***the prosecutor,*** which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain."

In view of the foregoing, the basic requisites of plea bargaining are: (*a*) consent of the offended party; (*b*) consent of the prosecutor; (*c*) plea of guilty to a lesser offense which is necessarily included in the offense charged; and (*d*) approval of the court.

4. ID.; ID.; ID.; ID.; CRIMINAL LAW; REPUBLIC ACT NO. 9165; PLEA BARGAINING IS ALLOWED IN DRUG CASES, BUT THE TRIAL PROSECUTOR MAY REJECT THE PROPOSED PLEA BARGAIN IF IT GOES BEYOND WHAT IS ALLOWED UNDER DOJ CIRCULAR NO. 27.— In drugs cases, plea bargaining was recently allowed through the Court's promulgation of *Estipona, Jr. v. Lobrigo,* which declared the provision in RA 9165 expressly disallowing plea

bargaining in drugs cases, *i.e.*, Section 23, Article II thereof, unconstitutional, for contravening the rule-making authority of the Supreme Court. Following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases. In response to A.M. No. 18-03-16-SC, the Secretary of Justice issued DOJ Circular No. 27 as a guideline to be observed by the trial prosecutors nationwide in entertaining plea bargaining offers in drugs cases.

Notably, while both A.M. No. 18-03-16-SC and DOJ Circular No. 27 enumerate in table format several violations of RA 9165 which could be subject to plea bargaining, they differ in the acceptable plea bargain, *i.e.*, the lesser offense to which the accused may plead guilty. Naturally, these differences would result in plea bargaining deadlocks, especially in light of DOJ Circular No. 27's explicit mandate that "if the proposed plea bargain is not allowed or goes beyond what is allowed under these guidelines, the trial prosecutor shall reject the proposed plea bargain outright and continue with the proceedings." This notwithstanding, in the recent case of *Sayre v. Xenos* (*Sayre*), the Court ruled in favor of the validity of DOJ Circular No. 27, holding that the same does not contravene the rule-making authority of the Court . . . .

5. ID.; ID.; ID.; ID.; A JUDGMENT OF CONVICTION BASED ON A VOID PLEA BARGAINING DUE TO THE ABSENCE OF THE PROSECUTION'S CONSENT IS *VOID AB INITIO* AND THE PROPER COURSE OF ACTION IS TO RESUME WITH THE TRIAL OF THE CASE.— In *Sayre*, the Court concluded that the continuing objection on the part of the prosecution based on DOJ Circular No. 27 will necessarily result in the parties' failure to arrive at a mutually satisfactory disposition of the case that may be submitted for the trial court's approval. In light of the absence of a mutual agreement to plea bargain, the proper course of action would be the continuation of the proceedings.

In this case, the RTC gravely abused its discretion in granting respondent's motion to plea bargain notwithstanding the prosecution's opposition to the same which is grounded on DOJ Circular No. 27. Effectively, respondent's plea of guilty to a lesser offense (to which he was convicted of) was made ***without***

the consent of the prosecution. Since respondent's plea of guilt and subsequent conviction for a lesser offense clearly lack one of the requisites of a valid plea bargain, the plea bargaining is void. Resultantly, the judgment rendered by the RTC which was based on a void plea bargaining is also ***void ab initio*** and cannot be considered to have attained finality for the simple reason that a void judgment has no legality from its inception. Thus, since the judgment of conviction rendered against respondent is void, it is only proper to resume with the trial of Criminal Case No. 2017-0053 – which prior to respondent's filing of his motion to plea bargain, was at the stage of the prosecution's presentation of evidence – without violating respondent's right against double jeopardy.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions[2] dated December 17, 2018 and May 24, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 158535, which dismissed the petition for *certiorari*, prohibition, and mandamus under Rule 65 of the Rules of Court (Rule 65 Petition) filed before it due to several procedural infirmities.

The Facts

On January 21, 2017, respondent Edwin Reafor *y* Comprado (respondent) was charged before the Regional Trial Court of Naga City, Branch 24 (RTC) of the crime of Illegal Sale of

---

[1] *Rollo*, pp. 12-43.

[2] Id. at 49-51 and 55-56, respectively. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Maria Elisa Sempio Diy and Gabriel T. Robeniol, concurring.

Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165, for allegedly selling two (2) heat-sealed transparent sachets containing a total of 0.149 gram of *shabu*.[3] During the presentation of the prosecution's evidence, respondent filed a Motion to Plea Bargain[4] dated July 26, 2018, contending that as per A.M. No. 18-03-16-SC,[5] he may be allowed to plead guilty to a lesser offense of violation of Section 12, Article II of RA 9165, which is punishable only by imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from ₱10,000.00 to ₱50,000.00. The prosecution opposed the motion, invoking Department of Justice (DOJ) Circular No. 27,[6] which provides, *inter alia*, that for the crime charged against respondent, the acceptable plea bargain is for violation of Section 11 (3), Article II of RA 9165, punishable by imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from ₱300,000.00 to ₱400,000.00.[7]

In an Order[8] dated August 24, 2018, the RTC granted respondent's motion over the opposition of the prosecution. It opined that since it is only the Supreme Court that has the power to promulgate rules of procedure, "A.M. No. 18-03-16-SC dated April 10, 2018, which now forms part of the procedure in all courts[,] must prevail over the said DOJ Circular [No.] 27."[9] Thereafter, respondent was re-arraigned and pled guilty to violation of Section 12, Article II of RA 9165 over the objection

---

[3] See Information, records, p. 1.

[4] CA *rollo*, pp. 47-48.

[5] Entitled "ADOPTION OF THE PLEA BARGAINING FRAMEWORK IN DRUGS CASES" dated April 10, 2018.

[6] Entitled "Amended Guidelines on Plea Bargaining for Republic Act No. 9165 otherwise known as the 'Comprehensive Dangerous Drugs Act of 2002.'"

[7] See Comment dated August 22, 2018, *rollo*, pp. 80-81.

[8] Id. at 52. Penned by Acting Presiding Judge Leo L. Intia.

[9] Id.

of the prosecution,[10] and was subsequently convicted therefor through a Judgment[11] dated September 6, 2018.

Aggrieved, on November 26, 2018, petitioner People of the Philippines, through the Office of the Solicitor General (OSG), filed a petition for *certiorari*[12] under Rule 65 of the Rules of Court before the CA, assailing: (*a*) the RTC Order dated August 24, 2018 granting respondent's Motion to Plea Bargain; (*b*) the RTC Order dated August 29, 2018 allowing respondent to plead guilty to violation of Section 12, Article II of RA 9165; and (*c*) the RTC Judgment dated September 6, 2018 convicting respondent of the aforesaid crime. The OSG argues that the RTC gravely abused its discretion in allowing respondent to undergo plea bargaining without the consent of the prosecution. Thus, it prayed that a temporary restraining order be issued enjoining the implementation of the assailed Judgment, and that the case be remanded to the RTC for continuation of proceedings.[13]

The CA Ruling

In a Resolution[14] dated December 17, 2018, the CA dismissed the petition on purely procedural grounds. It held that while the OSG admitted that the last day to file the petition was on October 28, 2018, it failed to provide sufficient justification as to why it took them nearly one (1) month to file the same. Moreover, it found that the OSG failed to offer any explanation as to why no motion for reconsideration (MR) was filed before the RTC prior to the filing of the said petition, which is a condition precedent before filing a Rule 65 Petition.[15]

---

[10] See Order dated August 29, 2018; id. at 53.

[11] Id. at 82-83.

[12] Id. at 85-122.

[13] Id. at 116-117.

[14] Id. at 49-51.

[15] Id. at 50-51.

Dissatisfied, petitioner moved for reconsideration, which was denied in a Resolution[16] dated May 24, 2019; hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA erred in dismissing the petition for *certiorari* filed before it.

The Court's Ruling

At the outset, the CA correctly pointed out that the petition filed before it suffers from procedural defects, in that no prior MR was filed before the RTC, and that the same was filed out of time. Nonetheless, there have been numerous cases wherein the Court disregarded procedural lapses in order to resolve a case on the merits. In this regard, case law instructs that "the rules of procedure need not always be applied in a strict technical sense, since they were adopted to help secure and not override substantial justice. 'In ***clearly meritorious cases***, the higher demands of substantial justice must transcend rigid observance of procedural rules.'"[17] As will be explained hereunder, the assailed Orders and Judgment of the RTC — all involving respondent's plea bargain to a lesser offense of violation of Section 12, Article II of RA 9165 — are void; hence, they can never be final and executory and may be assailed at any time.[18]

Plea bargaining to a lesser offense is governed by Section 2, Rule 116 of the Revised Rules of Criminal Procedure, which reads:

Section 2. *Plea of guilty to a lesser offense*. — The accused, with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether

---

[16] Id. at 55-56.

[17] *Heirs of Babai Guiambangan v. Municipality of Kalamansig, Sultan Kudarat*, 791 Phil. 518, 534, citing *Abdulrahman v. Ombudsman*, 716 Phil. 592, 604 (2013).

[18] See *Ga v. Spouses Tubungan*, 616 Phil. 709, 717 (2009).

or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary.

"Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge."[19] Essentially, it is a give-and-take negotiation wherein both the prosecution and the defense make concessions in order to avoid potential losses. The rules on plea bargaining neither creates nor takes away a right; rather, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.[20]

Nonetheless, it is well to clarify that "a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but ***depends on the consent of*** the offended party and ***the prosecutor***, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain."[21]

In view of the foregoing, the basic requisites of plea bargaining are: (*a*) consent of the offended party; (*b*) consent of the

---

[19] *Fernandez v. People*, G.R. No. 224708, October 2, 2019, citing *Daan v. Sandiganbayan*, 573 Phil. 368, 375 (2008).

[20] See *Estipona, Jr. v. Lobrigo*, 816 Phil. 789, 813 (2017).

[21] Id. at 814-815; citations omitted.

prosecutor; (*c*) plea of guilty to a lesser offense which is necessarily included in the offense charged; and (*d*) approval of the court.[22]

In drugs cases, plea bargaining was recently allowed through the Court's promulgation of *Estipona, Jr. v. Lobrigo*,[23] which declared the provision in RA 9165 expressly disallowing plea bargaining in drugs cases, *i.e.*, Section 23,[24] Article II thereof, unconstitutional, for contravening the rule-making authority of the Supreme Court. Following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases.[25] In response to A.M. No. 18-03-16-SC, the Secretary of Justice issued DOJ Circular No. 27 as a guideline to be observed by the trial prosecutors nationwide in entertaining plea bargaining offers in drugs cases.

Notably, while both A.M. No. 18-03-16-SC and DOJ Circular No. 27 enumerate in table format several violations of RA 9165 which could be subject to plea bargaining, they differ in the acceptable plea bargain, *i.e.*, the lesser offense to which the accused may plead guilty. Naturally, these differences would result in plea bargaining deadlocks, especially in light of DOJ Circular No. 27's explicit mandate that "if the proposed plea bargain is not allowed or goes beyond what is allowed under these guidelines, the trial prosecutor shall reject the proposed plea bargain outright and continue with the proceedings." This notwithstanding, in the recent case of *Sayre v. Xenos*[26] (Sayre), the Court ruled in favor of the validity of DOJ Circular No. 27,

---

[22] See *Fernandez v. People*, supra note 19.

[23] Supra note 20.

[24] Section 23, Article II of RA 9165 reads:

Section 23. *Plea-Bargaining Provision.* — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

[25] *Pascua v. People*, G.R. No. 250578, September 7, 2020; citations omitted.

[26] G.R. Nos. 244413 and 244415-16, February 18, 2020.

holding that the same does not contravene the rule-making authority of the Court, *viz.*:

> In this petition, A.M. No. 18-03-16-SC is a rule of procedure established pursuant to the rule-making power of the Supreme Court that serves as a framework and guide to the trial courts in plea bargaining violations of [RA] 9165.
>
> **Nonetheless, a plea bargain still requires mutual agreement of the parties and remains subject to the approval of the court. The acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter addressed entirely to the sound discretion of the trial court.**
>
> x x x x
>
> The use of the word "may" signifies that the trial court has discretion whether to allow the accused to make a plea of guilty to a lesser offense. **Moreover, plea bargaining requires the consent of** the accused, offended party, and **the prosecutor**. It is also essential that the lesser offense is necessarily included in the offense charged.
>
> Taking into consideration the requirements in pleading guilty to a lesser offense, We find it proper to treat the refusal of the prosecution to adopt the acceptable plea bargain for the charge of Illegal Sale of Dangerous Drugs provided in AM. No. 18-03-16-SC **as a continuing objection that should be resolved by the RTC**. This harmonizes the constitutional provision on the rule-making power of the Court under the Constitution and the nature of plea bargaining in Dangerous Drugs cases. DOJ Circular No. 27 did not repeal, alter or modify the Plea Bargaining Framework in A.M. No. 18-03-16-SC.
>
> Therefore, the DOJ Circular No. 27 provision pertaining to acceptable plea bargain for Section 5 of [RA] 9165 did not violate the rule-making authority of the Court. **DOJ Circular No. 27 merely serves as an internal guideline for prosecutors to observe before they may give their consent to proposed plea bargains**.[27] (Emphases and underscoring supplied)

In *Sayre*, the Court concluded that the continuing objection on the part of the prosecution based on DOJ Circular No. 27 will necessarily result in the parties' failure to arrive at a mutually

---

[27] Id.

satisfactory disposition of the case that may be submitted for the trial court's approval. In light of the absence of a mutual agreement to plea bargain, the proper course of action would be the continuation of the proceedings.

In this case, the RTC gravely abused its discretion in granting respondent's motion to plea bargain notwithstanding the prosecution's opposition to the same which is grounded on DOJ Circular No. 27. Effectively, respondent's plea of guilty to a lesser offense (to which he was convicted of) was made ***without the consent of the prosecution***. Since respondent's plea of guilt and subsequent conviction for a lesser offense clearly lack one of the requisites of a valid plea bargain, the plea bargaining is void. Resultantly, the judgment rendered by the RTC which was based on a void plea bargaining is also ***void ab initio*** and cannot be considered to have attained finality for the simple reason that a void judgment has no legality from its inception.[28] Thus, since the judgment of conviction rendered against respondent is void, it is only proper to resume with the trial of Criminal Case No. 2017-0053 — which prior to respondent's filing of his motion to plea bargain, was at the stage of the prosecution's presentation of evidence — without violating respondent's right against double jeopardy.[29]

WHEREFORE, the petition is **GRANTED**. The Resolutions dated December 17, 2018 and May 24, 2019 of the Court of Appeals in CA-G.R. SP No. 158535 are **REVERSED** and **SET ASIDE**. The Orders dated August 24, 2018 and August 29, 2018 and the Judgment dated September 6, 2018 are hereby **ANNULLED** and **SET ASIDE**. Accordingly, Criminal Case No. 2017-0053 is **REMANDED** to the Regional Trial Court of Naga City, Branch 24 for further proceedings as indicated in this Decision.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and *Rosario,*[*] *JJ.*, concur.

---

[28] See *People v. Magat,* 388 Phil. 311, 321 (2000).

[29] See id. See also *People v. Villarama, Jr.*, 285 Phil. 723, 732-733 (1992).

[*] Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

PRESIDENTIAL ELECTORAL TRIBUNAL

[PET Case No. 005. November 17, 2020]

FERDINAND "BONGBONG" R. MARCOS, JR., *Protestant, v.* **MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO,** *Protestee*.

SYLLABUS

1. POLITICAL LAW; PRESIDENTIAL ELECTORAL TRIBUNAL (PET); THERE IS NO RULE THAT AN ELECTION PROTEST SHOULD BE DECIDED WITHIN TWENTY (20) OR TWELVE (12) MONTHS.— Alleging delay in this case, protestant cited Republic Act No. 1793, Section 3, . . .

The provision . . . is no longer [a] good law.

. . .

Administrative Matter No. 10-4-29-SC, otherwise known as The 2010 Rules of the Presidential Electoral Tribunal governs this Tribunal's proceedings. . . .

There is no rule requiring that an election protest should be decided within twenty (20) months or twelve (12) months. The allegation of undue delay is severely unfounded.

2. REMEDIAL LAW; INHIBITION OF MEMBERS OF THE COURT FROM PARTICIPATING IN THE RESOLUTION OF A CASE; A REQUEST FOR VOLUNTARY INHIBITION MUST PRESENT CLEAR AND CONVINCING EVIDENCE OF BIAS.— Rule 8 (*Inhibition and Substitution of Members of the Court*), Section 1 of the Internal Rules of the Supreme Court [provides for the grounds for inhibition from participating in the resolution of the case]. . . .

None of protestant and the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules. There were no prior proceedings where he may have participated. He had no professional engagement with, pecuniary

interest relative to, or relation within the sixth degree of consanguinity or affinity to any of the parties or their counsels.

Protestant urges Justice Leonen to voluntarily inhibit. However, a movant seeking the inhibition of a magistrate is duty-bound to present clear and convincing evidence of bias to justify such request.

. . .

. . . Bias means a preconceived notion, which may be favorable or unfavorable to a party. Bias does not pertain to an instance when this Tribunal does not rule however you wish it to.

. . .

To move for the inhibition of a justice because of a perceived notion of bias or partiality against a party based on past decisions would not hold water.

3. POLITICAL LAW; SUPREME COURT; PET; DELIBERATING WITH FELLOW JUSTICES TO DECIDE A CASE IS THE SUPREME COURT'S MOST BASIC FUNCTION.— A litigant's right to seek inhibition must be balanced with the judge's sacred duty to decide cases without fear of repression. At its core, deliberating with fellow justices to decide a case is this Court's most basic function: . . .

This Court is a collegial body. The Supreme Court acts on a pending incident or resolves a case either *en banc* or in division. Decisions are not rendered in a Justice's individual capacity, but are, instead, arrived at through a majority vote of the Supreme Court's members. The Member-in-Charge simply recommends the action to be taken.

. . .

When the Supreme Court resolves a case in division, it is not a separate entity from the Supreme Court *en banc*. The Supreme Court *en banc* is not an appellate court where decisions by its divisions may be appealed. . . .

When sitting as the Presidential Electoral Tribunal, all Justices of the Supreme Court act as one body. The order asking the Commission on Elections and the Solicitor General to comment was not Justice Leonen's directive. Rather, it was this Tribunal's.

When protestant and the Solicitor General argue that Justice Leonen was grossly ignorant in issuing these Orders, in effect, what they are saying is that this Tribunal was grossly ignorant of the law. This is disrespectful and discourteous to this Tribunal.

4. ID.; CONSTITUTIONAL LAW; RIGHT TO INFORMATION; PRIVILEGED COMMUNICATION; COURT DELIBERATIONS ARE CONFIDENTIAL AND GENERALLY PRIVILEGED COMMUNICATION. –– Drafts yet to be voted on are confidential because they merely form part of the internal deliberations of the Supreme Court, and may later change. . . . Until the members of the Court vote on a matter, a position in a draft is temporary. Therefore, drafts for the Court's deliberations should not be taken against any Justice who, again, is *simply doing his or her job*.

. . .

Court deliberations are generally considered to be privileged communication, making it one of the exceptions to the constitutional right to information.

In *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses*, the Supreme Court, citing Justice Abad's concurring opinion in *Arroyo v. De Lima*, explained that the deliberative process privilege was necessary to precipitate a free discussion of issues among its members without fear of criticism or humiliation in case a member went against the popular opinion:
. . .

The deliberative process privilege is not exclusive to the Judiciary and is enjoyed by any agency or body whose functions involve deliberations or candid discussions before arriving at a final policy or resolution. Aside from allowing an unfettered exchange of ideas, *Department of Foreign Affairs v. BCA International Corp.* also explained that the deliberative process privilege is necessary to prevent "public confusion from premature disclosure of agency opinions before the agency establishes final policy."

. . . [T]he Tribunal for now sees fit to remind the parties that the deliberative process privilege enjoys absolute confidentiality and exhorts them to accord it respect.

5. ID.; OFFICE OF THE SOLICITOR GENERAL (OSG); PEOPLE'S TRIBUNE; THE OSG's STATUS AS PEOPLE'S TRIBUNE IS PROPERLY INVOKED ONLY IF THE REPUBLIC OF THE PHILIPPINES IS A PARTY LITIGANT TO THE CASE.— People's Tribune has been defined as:

> [A]n instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position.

The Office of the Solicitor General is the law office of the government. Its default client is the Republic of the Philippines, but ultimately, "the distinguished client of the Office of the Solicitor General is the people themselves." Its status as People's Tribune is properly invoked only if the Republic of the Philippines is a party litigant to the case.

Here, the Republic of the Philippines is not a party litigant. Protestant filed this election protest in his bid to oust the elected Vice President. Simply, this involves private individuals only. Yet the Solicitor General comes to this Tribunal without, at the very least, asking for leave of court as courtesy to this Tribunal.

. . .

This Tribunal reminds the Office of the Solicitor General that it has been previously admonished that "[i]n future cases, however, the Office of the Solicitor General should be more cautious in entering its appearance to this Court as the People's Tribune to prevent further confusion as to its standing."

If indeed the Solicitor General was genuinely concerned about the protracted resolution of the protest and its effect on the people who "deserves nothing less," then he should have confined the issue to the supposed delay in the resolution of the protest, as this was the only matter with relevance to the public.

6. ID.; ID.; THE SOLICITOR GENERAL SHOULD EXERCISE HIS DISCRETION IN A WAY THAT THE PEOPLE'S FAITH IN THE COURTS OF JUSTICE IS NOT IMPAIRED. — [T]he Solicitor General imputed impartiality and incompetence not only against a sitting member of this Tribunal but also against the entire body.

We echo the Solicitor General's arguments and counsel him to "conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired." Lamenting a decision he posits as unfavorable to a particular family and lackadaisically invoking People's Tribune are not hallmarks of a high-ranking government official on whom public trust is reposed.

The Solicitor General should have been more circumspect before he cited unsubstantiated news articles.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for protestant.
Romulo B. Macalintal for protestee.

R E S O L U T I O N

***PER CURIAM*:**

For resolution of this Tribunal is protestant's Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case and the Office of the Solicitor General's Omnibus Motion (Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen and Reraffle).

Unanimously, we deny these Motions to Inhibit.

On November 9, 2020, protestant filed a "Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case." He alleges that since October 2019, the protest has "remained in limbo."[1]

He further alleges that the pronouncements of Associate Justice Marvic M.V.F. Leonen (Justice Leonen) "in a number

[1] Strong Manifestation with Extremely Urgent Omnibus Motion, p. 5.

of landmark cases, his previous employment history as well as the manner in which he has handled the election protest. . . will prove that he will not be a fair and impartial *ponente*."[2]

To bolster his point, protestant underscores Justice Leonen's dissenting opinion in *Ocampo v. Enriquez*,[3] or the Marcos burial case, which supposedly shows Justice Leonen's bias and partiality against protestant and his family.[4]

Additionally, protestant surmises that this protest is the "perfect venue for Associate Justice Leonen to exact vengeance."[5] He narrates that when Justice Leonen was the country's Chief Peace Negotiator, protestant, who was then the head of the Senate Committee on Local Governments, blocked the creation of the Bangsamoro Juridical Entity, which Justice Leonen envisioned and worked for.[6]

Protestant also draws attention to a news article[7] written by a certain Jomar Canlas (Canlas), which stated that Justice Leonen circulated his 25-page Reflections back in July 10, 2017 recommending the dismissal of this protest, thereby showing his prejudgment. The Reflections supposedly lobbied for the dismissal of the protest even before it was deliberated upon and even before Justice Leonen became part of the "panel".[8]

---

[2] Id. at 6.

[3] 798 Phil. 227, 519-637 (2016) [Per J. Peralta, En Banc].

[4] Strong Manifestation with Extremely Urgent Omnibus Motion, pp. 6-8.

[5] Id. at 8.

[6] Id. at 8-10. Protestant cited a newspaper article written by a certain Mario Gio Samonte, *Why hasn't Bongbong learned from his father?* published in The Manila Times on October 11, 2020.

[7] Jomar Canlas, *Justice prejudged Marcos poll protest*, THE MANILA TIMES, October 12, 2020 <https://www.manilatimes.net/2020/10/12/second-headline/justice-prejudged-marcos-poll-protest/779459/> (last accessed on November 17, 2020).

[8] Strong Manifestation with Extremely Urgent Omnibus Motion, pp. 11-12.

Protestant claims the delay in the resolution of this election protest, which hardly moved from the time Justice Leonen took over as *ponente* and was marked by "one deferment after another through a series of resets and 'call-against'"[9] clearly showed Justice Leonen's bias and partiality.

Moreover, protestant avers that the referral of certain matters to the Office of the Solicitor General and the Commission on Elections only a year after the protest was raffled to Justice Leonen, showed the latter's ignorance of the law as referral to these offices should have been done the moment the protest was raffled to him.[10] As such, this only served to further delay its resolution.[11]

Protestant cites a portion of Justice Leonen's speech during the 5th National Congress of the National Union of Peoples Congress as further proof of his partiality:

> Just because you are for due process of law does not mean that you are for one party. . . It might take the tribunal some time to reach a conclusion since "you would want. . . everyone to be able to argue [their] case first.[12]

Protestant underscores that delaying the resolution of this election protest is against public policy because it "disregards the sanctity of votes and the popular choice of the people."[13] He cites Republic Act No. 1793,[14] which requires for an election

---

[9] Id. at 14.

[10] Id. at 15.

[11] Id. at 16.

[12] Id. at 15 *citing* Jerome Aning, Patricia Denise M. Chiu, *Leonen explains deferred ruling on VP poll protest*, INQUIRER.NET, October 20, 2019 <https://newsinfo.inquirer.net/1179607/leonen-explains-deferred-ruling-on-vp-poll-protest> (last accessed on November 17, 2020).

[13] Id. at 16.

[14] An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same (1957).

protest to be decided within twenty (20) months after it is filed, as the standard for the expeditious resolution of election protests.[15]

Protestant thus asks for the following reliefs from this Tribunal:

WHEREFORE, premises considered and with the utmost esteem to the honorable Tribunal, movant respectfully prays that it:

1. **CONSIDER, DECIDE** and **GRANT** the instant respectful *Strong Manifestation with Extremely Urgent Omnibus Motion for Inhibition* of **Associate Justice Mario Victor F. Leonen;**

2. **ORDER THE IMMEDIATE RE-RAFFLE** of the instant election protest; and

3. **RESOLVE ALL PENDING INCIDENTS** in the above-entitled case.

Other reliefs, just and equitable under the premises, are likewise prayed for.[16] (Emphasis in the original)

---

[15] Rep. Act No. 1793 partly provides:

SECTION 3. The Presidential Electoral Tribunal shall decide the contest within twenty months after it is filed, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled. The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record, No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished both houses of the Congress.

[16] Id. at 18.

On the same day, the Office of the Solicitor General, led by Solicitor General Jose C. Calida (Solicitor General), filed a similar motion arguing that ever since the protest was raffled to Justice Leonen, "the people has been suspended in animation for close to a year."[17] The Solicitor General suggests that this inordinate delay manifests Justice Leonen's bias and partiality against protestant.[18]

Claiming to act as the People's Tribune, the Solicitor General moves for Justice Leonen's inhibition for the best interest of the State and the People. He avers that the expeditious resolution of the protest will finally reveal the real winner in the vice-presidential elections.[19]

Echoing the protestant, the Solicitor General also states that Justice Leonen's strongly-worded dissent in the Marcos burial case shows his bias and partiality.[20] He submits that "[t]here is also a need to investigate some reports about [Justice Leonen's] activities and actuations that destroy the reputation and trust of the people to an impartial Presidential Electoral Tribunal."[21]

The Solicitor General asserts that Justice Leonen showed his "loathsome attitude"[22] towards the entire Marcos family in his dissenting opinion in the Marcos burial case when he accused the whole Marcos family as beneficiaries of ill-gotten wealth despite their age, status, and lack of participation. The Solicitor General continues that Justice Leonen's obvious disdain over President Rodrigo Duterte's order to allow the burial of former President Ferdinand E. Marcos (President Marcos) in the Libingan ng mga Bayani as a symbol of closure, healing, and

---

[17] OSG Omnibus Motion, p. 2.

[18] Id.

[19] Id. at 4.

[20] Id. at 2.

[21] Id.

[22] Id. at 8.

reconciliation, shows his deeply-rooted, personal hatred of the whole Marcos family.[23] He states:

> It is all too clear that Justice Leonen's scornful remarks in his dissent, comprising 94 pages and containing a litany of expressions beyond the legal issues presented in the Marcos burial cases, established his hatred towards the Marcos family, to which protestant belongs.[24]

The Solicitor General concludes that Justice Leonen prejudged the participation of the entire Marcos family in plunder when they were exiled.[25]

Next, the Solicitor General emphasizes that undue delay characterized the proceedings under the previous and current members in charge: "The inaction of the current Member-in-Charge, the Honorable Justice Leonen, for the past 11 months, coupled with his expressed disdain to the members of the Marcos family, duly recorded in his opinions as Associate Justice, compel us, with due respect, to move for his inhibition."[26]

Further, the Solicitor General asseverates that Justice Leonen's partiality and delay in resolving the current petition has resulted to impairment of public trust in the judiciary. Again echoing the protestant, the Solicitor General also referred to Canlas' news article which criticized Justice Leonen for circulating his Reflections to other members of this Tribunal before he became part of the "panel".[27]

The Solicitor General then insists that Justice Leonen's partiality against the Marcoses, as well as his lack of competence and probity, was shown when he penned *Chavez v. Marcos*.[28]

---

[23] Id. at 9-12.

[24] Id. at 13.

[25] Id. at 13.

[26] Id. at 2.

[27] Id. at 21.

[28] Id. at 14-16.

He puts forth that *Chavez* only centered on the collateral issue of the propriety of inhibition and did not touch upon the violation of former First Lady Imelda Marcos' right to double jeopardy or right to a speedy disposition of the case.[29] The Solicitor General laments that although "[t]he petition of Chavez was eventually denied[,] Mrs. Marcos, despite her acquittal, *lost* as she was constrained to re-litigate for an additional period of more than ten (10) years."[30]

Finally, the Solicitor General cites Republic Act No. 1793[31] and Batas Pambansa Blg. 884[32] which both require the immediate resolution of pending presidential and vice-presidential challenges before this Tribunal as legal bases for his accusation of undue delay against Justice Leonen.[33]

Citing *Pimentel v. Salanga*,[34] the Solicitor General posits that when there is a "suggestion. . . that [a judge] might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired[.]"[35]

The Solicitor General proposes that in the absence of a clear criteria for mandatory inhibition, the following non-exclusive parameters should be considered for voluntary inhibition:

---

[29] Id. at 16.

[30] Id.

[31] An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice President-Elect of the Philippines and Providing for the Manner of Hearing the Same (1957).

[32] An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Election Contests in the Office of President and Vice President of the Philippines, Appropriating Funds therefor and for Other Purposes (1985).

[33] OSG Omnibus Motion, p. 24.

[34] 128 Phil. 176 (1967) [Per J. Sanchez, En Banc].

[35] OSG Omnibus Motion, p. 28.

(a) there is a recorded suggestion that the judge may be partial or bias[ed] in any way; (b) the exercise of the discretion whether to inhibit would impair the people's faith or confidence in the courts of justice; (c) the probability that the losing party might nurture or entertain a thought that the judge had unfairly titled the scales of justice against him; (d) availability of another judge to take over the case, and (e) inhibition does not result to appreciable prejudice to the parties.[36]

He then concludes that "the totality of facts and circumstances require inhibition by Justice Leonen."[37] Additionally, he calls on the rest of this Tribunal to push for Justice Leonen's inhibition: "[T]he general sentiment of the other Members of the Court may be considered given the settled approach on matters of inhibition. . . It has been held that in the event that a judge may be unable to discern for himself his inability to meet the test of the cold neutrality required of him, the Supreme Court has seen to it that he should disqualify himself."[38]

As a parting shot, the Solicitor General remarks that "[t]he resulting inhibition may even allow the Justice to focus on his reported unresolved docket of cases."[39]

The Solicitor General thus prayed as follows:

WHEREFORE, premises considered, the Office of the Solicitor General (OSG) prays, with utmost respect to the Honorable Members of the Tribunal, that they:

1. **DECIDE** and **GRANT** the instant Omnibus Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen; and

2. **ORDER THE IMMEDIATE RERAFFLE** of the instant election protest case to another Member of the Tribunal.

Such other forms of relief that are just and equitable under the premises are likewise prayed for.[40]

---

[36] Id. at 30.

[37] Id. at 31.

[38] Id. at 30-31.

[39] Id. at 33.

[40] Id. at 33-34.

In her Countermanifestation to protestant's motion for inhibition and re-raffle, protestee points out that this Tribunal, in its August 28, 2018 Resolution in relation to protestant's motion for the inhibition of Justice Caguioa, had sternly warned protestant to refrain from making any further "unfounded and inappropriate accusation"[41] as similar accusations will be dealt with more severely.

She then underscores that despite the previous warning he received, protestant once again followed "the same frivolous route in his Extremely Urgent Motion for Inhibition."[42]

Protestee stresses that the accusations leveled against Justice Leonen were of the same import as the accusations protestant also threw at Justice Caguioa when the latter was Member-in-Charge.[43] To illustrate the illogical reasoning of protestant's arguments, she listed[44] the basic personal facts on the sitting Justices who also served as Tribunal members. She then stated that following protestant's train of thought, she should also ask for the inhibition of the Tribunal members who voted for President Marcos' burial in the Libingan ng mga Bayani; those who had possible ties with protestant and the Solicitor General; and those who were appointed by President Duterte, a recognized ally of protestant and his family, as these would show their bias and partiality towards protestant.[45]

The sole issue for this Tribunal's resolution is whether or not Associate Justice Marvic Mario Victor F. Leonen should inhibit from this election protest.

This is not the first time the protestant attempted to move for the inhibition of the member-in-charge of this case. This should however be the last time.

---

[41] Counter Manifestation, pp. 2-3.

[42] Id. at 6.

[43] Id. at 8.

[44] Id. at 8-10.

[45] Id. at 10-11.

In this Tribunal's August 28, 2018 Resolution, where protestant similarly moved to inhibit the then Member-in-Charge of the case, we warned that "any unfounded and inappropriate accusation made in the future will be dealt with more severely."[46]

In his second motion for inhibition protestant is joined by the Solicitor General, who is not a party to the case but is acting as the People's Tribune. Protestant and the Solicitor General raised the same arguments, and prayed for the same reliefs.

Nonetheless, as we emphasized in the first inhibition case filed before this Tribunal, "[t]his Court will not require a judge to inhibit himself in the absence of clear and convincing evidence to overcome the presumption that he will dispense justice in accordance with law and evidence."[47]

I

Rule 8, Section 1 of the Internal Rules of the Supreme Court[48] is clear:

RULE 8

Inhibition and Substitution of Members of the Court

SECTION 1. *Grounds for Inhibition*. — A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

---

[46] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018 [Resolution, Per Curiam].

[47] *Chavez v. Marcos*, G.R. No. 185484, June 27, 2018, 868 SCRA 251, 253 [Per J. Leonen, Third Division] *citing Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339 (2005) [Per J. Panganiban, Third Division].

[48] Adm. Matter No. 10-4-20-SC (2010).

(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member, of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

None of protestant and the Solicitor General's arguments cited a clear ground to warrant Justice Leonen's inhibition under the Rules. There were no prior proceedings where he may have participated. He had no professional engagement with, pecuniary interest relative to, or relation within the sixth degree of consanguinity or affinity to any of the parties or their counsels.

Protestant urges Justice Leonen to voluntarily inhibit. However, a movant seeking the inhibition of a magistrate is duty-bound to present clear and convincing evidence of bias to justify such request.[49]

Protestant failed to do so.

II

This Tribunal's actions on pending matters before it are not always publicized. There is no requirement to keep the parties

---

[49] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, [Resolution, Per Curiam] *citing Republic v. Sereno*, G.R. No. 237428, May 11, 2018, 863 SCRA 1 [Per J. Jardeleza, En Banc].

abreast with all its internal proceedings, especially on administrative matters which do not directly concern them.

Alleging delay in this case, protestant cited Republic Act No. 1793, Section 3, which provides:

> SECTION 3. The Presidential Electoral Tribunal ***shall decide the contest within twenty months after it is filed***, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the members of the Congress in joint session assembled.
>
> The party who, in the judgment, has been declared elected, shall have the right to assume the office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record, No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished both houses of the Congress. (Emphasis supplied).

The provision which protestant cited is no longer good law.

Atty. Macalintal v. Presidential Electoral Tribunal[50] extensively discussed this Tribunal's history.

Republic Act No. 1793 was passed in 1957, "[t]o fill in the void in the 1935 Constitution[.]"[51] At that time, there was no institution tasked to resolve election contests for the positions of President and Vice-President.

---

[50] 650 Phil. 326 (2010) [Per J. Nachura, En Banc].

[51] Id. at 347.

Under the 1973 Constitution, Republic Act No. 1793 was impliedly repealed since the President will not be directly voted by the citizens anymore but will come from the members of National Assembly. Further, "the position of Vice-President was constitutionally non-existent."[52]

When the direct election of the President and the Vice-President were restored, the National Assembly passed Batas Pambansa Blg. 884, otherwise known as "An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear, and Decide Election Contests in the Office of the President and Vice-President of the Philippines, Appropriating Funds Therefor and For Other Purposes."[53]

Finally, under the 1986 Constitution, this Tribunal ceased to be a mere statutory creation and became a constitutional institution:

> A plain reading of Article VII, Section 4, paragraph 7, readily reveals a grant of authority to the Supreme Court sitting *en banc*. In the same vein, although the method by which the Supreme Court exercises this authority is not specified in the provision, *the grant of power does not contain any limitation on the Supreme Court's exercise thereof*. The Supreme Court's *method* of deciding presidential and vice-presidential election contests, through the PET, is actually a derivative of the exercise of the prerogative conferred by the aforequoted constitutional provision. Thus, the subsequent directive in the provision for the Supreme Court to "promulgate its rules for the purpose."[54] (Emphasis supplied.)

Administrative Matter No. 10-4-29-SC, otherwise known as The 2010 Rules of the Presidential Electoral Tribunal governs this Tribunal's proceedings. The relevant provision reads:

> RULE 67. *Procedure in Deciding Contests*. — In rendering its decision, the Tribunal shall follow the procedure prescribed for the

---

[52] Id. at 348.

[53] Id. at 348-349.

[54] Id. at 353.

Supreme Court in Sections 13 and 14, Article VIII of the Constitution.

The Constitutional provisions cited in Rule 67 state:

ARTICLE VIII

Judicial Department

. . . .

SECTION 13. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

There is no rule requiring that an election protest should be decided within twenty (20) months[55] or twelve (12) months.[56] The allegation of undue delay is severely unfounded.

---

[55] Strong Manifestation with Extremely Urgent Omnibus Motion, p. 2.

[56] Rep. Act No. 1793 partly provides:

SECTION 3. The Presidential Electoral Tribunal shall decide the contest within twenty months after it is filed, and within said period shall declare who among the parties has been elected, or, in the proper case, that none has been elected, and in case of a tie between the candidates for president or for vice-president involved in the contest, one of them shall be chosen President or Vice-president, as the case may be, by a majority vote of the members of the Congress in joint session assembled. The party who, in the judgment, has been declared elected, shall have the right to assume the

In this Tribunal's October 15, 2019 Resolution,[57] the parties were informed of the results of the revision and appreciation of ballots in the 5,415 clustered precincts in the pilot provinces. In the interest of due process, the parties were directed to submit a Memorandum containing their comments and positions on specifically delineated issues within 20 working days.[58]

In separate Motions, the parties requested for time to view, photocopy, and secure hard copies of the voluminous records

---

office as soon as the judgment becomes final which shall be ten days after promulgation. The promulgation shall be made on a date previously fixed, of which notice shall be served in advance upon the parties or their attorneys, personally or by registered mail or by telegraph. No motion shall be entertained for the reopening of a case but only for the reconsideration of a decision under the evidence already of record, No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration shall be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished both houses of the Congress.

[56] Batas Pambansa Blg. 884 partly states:

SECTION 4. The Tribunal must decide the contest within twelve months after it is filed. In case of a tie between the candidates for President and/or for Vice-President involved in the contest, the Tribunal shall notify the Batasang Pambansa of such fact, in which case the President or Vice-President, as the case may be, shall be chosen by a vote of a majority of all the Members of the Batasang Pambansa in session assembled. The promulgation of the judgment shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys, personally or by special registered mail or by telegram. No motion shall be entertained for the opening of a case but only for the reconsideration of a decision based on the evidence already of record. No party may file more than one motion for reconsideration, copy of which shall be served upon the adverse party who shall answer it within five days after the receipt thereof. Any petition for reconsideration must be resolved within ten days after it is submitted for resolution. As soon as a decision becomes final, a copy thereof shall be furnished the Batasang Pambansa through the Speaker, and the Commission on Elections through its Chairman, in addition to the copies for the contestants or their attorneys.

[57] *Marcos v. Robredo*, P.E.T. Case No. 005. October 15, 2019, <https://sc.judiciary.gov.ph/7752/> [Per Curiam, Presidential Electoral Tribunal].

[58] Id. at 54-55.

of the case. This Tribunal granted their prayers in its November 5, 2019 Resolution where the parties were directed to submit their Memoranda 20 days after completion of their requested photocopying.

Accordingly, the parties each submitted a Memorandum dated December 19, 2019. Both were noted in this Tribunal's January 7, 2020 Resolution. Thereafter, several incidents concerning the contracts of this Tribunal's personnel were resolved with dispatch.

In their respective Memoranda, the parties made serious factual allegations that warranted verification from the Commission on Elections. They also raised constitutional issues which led this Tribunal to require the Solicitor General's comment for a fair and full resolution of this protest.

Contrary to the protestant and the Solicitor General's actuations, the directives for the Commission on Elections and the Solicitor General were not in response to opinion pieces, which this Tribunal does not heed. In this Tribunal's August 28, 2018 Resolution, we denied protestant's similar motion and ruled that "an opinion piece in a news website and an unauthenticated video circulating on social media websites are not credible and admissible supporting evidence; *they are not even worthy of cognizance by the Court*."[59]

This Tribunal has not changed its stance on the matter.

III

A litigant's right to seek inhibition must be balanced with the judge's sacred duty to decide cases without fear of repression.[60] At its core, deliberating with fellow justices to decide a case is this Court's most basic function:

---

[59] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, p. 10 [Resolution, Per Curiam].

[60] Id. at 2.

RULE 13

Decision-Making Process

. . . .

SECTION 3. *Actions and Decisions, How Reached*. — The actions and decisions of the Court whether *en banc* or through a Division, shall be arrived at as follows:

(a) *Initial action on the petition or complaint.* — After a petition or complaint has been placed on the agenda for the first time, the Member-in-Charge shall, except in urgent cases, submit to the other Members at least three days before the initial deliberation in such case, a summary of facts, the issue or issues involved, and the arguments that the petitioner presents in support of his or her case. The Court shall, in consultation with its Members, decide on what action it will take.

(b) *Action on incidents*. — The Member-in-Charge shall recommend to the Court the action to be taken on any incident during the pendency of the case.

(c) *Decision or Resolution*. — When a case is submitted for decision or resolution, the Member-in-Charge shall have the same placed in the agenda of the Court for deliberation. He or she shall submit to the other Members of the Court, at least seven days in advance, a report that shall contain the facts, the issue or issues involved, the arguments of the contending parties, and the laws and jurisprudence that can aid the Court in deciding or resolving the case. In consultation, the Members of the Court shall agree on the conclusion or conclusions in the case, unless the said Member requests a continuance and the Court grants it.

SECTION 4. *Continuance in Deliberations*. — The deliberation on a case may be adjourned to another date to enable the Member who requested it to further study the case; provided, however, that the total period of continuances in the deliberation shall not exceed three months from the date it was first adjourned, unless the Court for good reason extends such period.

The immediately preceding rule shall likewise apply to actions on motions for reconsideration of the decisions and resolutions of the Court, unless a Member, whose vote in the original decision of a divided Court matters, is about to retire. In such a situation, the action

on the motion for reconsideration submitted for resolution shall be made before his or her retirement.

SECTION 5. *Decision-making process*. — a) A Member who disagrees with the report and the recommended action of the Member-in-Charge may submit to the Chief Justice or Division Chairperson, furnishing a copy to other Members, his or her reflections, setting forth the reason or reasons for such disagreement.

b) A Member who agrees with the recommended action but based on different reason or reasons may, observing the same procedure, submit his or her reflections stating such reason or reasons.

c) Unless the Court allows a longer period, the reflections must be submitted within a maximum period of one month from the date the Member-in-Charge's report is presented to the Court.

d) After the submission of the reflections, the Member-in-Charge may request for a vote on the report and the reflections or for time to respond to such reflections within a maximum period of two weeks. Voting shall take place when the final versions of the report and the reflections shall have been submitted.

e) The Court shall then assign to a Member the writing of its opinion based on the result of the voting. The Member assigned shall submit the majority opinion and the other Members may submit his or her dissenting, separate, or concurring opinions based solely on the final versions voted upon.

f) The majority opinion together with the other opinions shall be simultaneously filed with the Chief Justice or the Division Chairperson and promulgated as official Court actions in the case.

g) Considering the collegial nature of the Court actions, a Member's vote during the final deliberation on a case cannot be unilaterally changed.[61]

This Court is a collegial body. The Supreme Court acts on a pending incident or resolves a case either *en banc* or in division. Decisions are not rendered in a Justice's individual capacity, but are, instead, arrived at through a majority vote of the Supreme Court's members. The Member-in-Charge simply recommends the action to be taken.[62]

---

[61] S. CT. INT. RULES, secs. 3, 4, and 5.

[62] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, p. 6 [Resolution, Per Curiam].

The Solicitor General insists that Justice Leonen exhibited lack of competence and probity when he penned the Third Division's decision in *Chavez v. Marcos*.[63] In effect, what he wants this Tribunal to accept is that Former Chief Justice Lucas Bersamin, Associate Justices Presbitero Velasco, Jr., Samuel Martires, Francis H. Jardeleza, and Leonen were all incompetent and lacking in probity because in *Chavez*, the then Third Division rendered the decision and merely spoke through Justice Leonen.

When the Supreme Court resolves a case in division, it is not a separate entity from the Supreme Court *en banc*. The Supreme Court *en banc* is not an appellate court where decisions by its divisions may be appealed. Thus, the Solicitor General's imputation of incompetence and lack of probity extends to all the members of the Supreme Court when *Chavez* was promulgated.

When sitting as the Presidential Electoral Tribunal, all Justices of the Supreme Court act as one body. The order asking the Commission on Elections and the Solicitor General to comment was not Justice Leonen's directive. Rather, it was this Tribunal's. When protestant and the Solicitor General argue that Justice Leonen was grossly ignorant in issuing these Orders, in effect, what they are saying is that this Tribunal was grossly ignorant of the law.[64] This is disrespectful and discourteous to this Tribunal.

We regret to find ourselves repeating earlier statements made when we denied protestant's similar motion as he tirelessly insists on the same arguments. "Unless protestant can prove with tangible evidence how a single Member was able to maneuver the will of 14 other Members into blindly following him with regard to all matters referred to the Tribunal, it is best that he maintain his arguments within the realm of reality."[65]

---

[63] OSG Omnibus Motion, p. 16.

[64] Strong Manifestation with Extremely Urgent Omnibus Motion, p. 15.

[65] *Marcos v. Robredo*, P.E.T. Case No. 005, August 28, 2018, p. 6 [Per Curiam, Presidential Electoral Tribunal].

Lawyers for litigants at the highest level of our judicial system are expected to have a better knowledge of our workings. They do a disservice to their clients when they mislead them and the public that the Supreme Court is less than a collegial body. That the protestant's mistaken view of this court is joined by no less than the Solicitor General is deeply disturbing.

III. A.

Protestant and the Solicitor General misconstrue what bias and impartiality mean. Bias means a preconceived notion, which may be favorable or unfavorable to a party. Bias does not pertain to an instance when this Tribunal does not rule however you wish it to.

In the same manner, protestant and the Solicitor General mistakenly equate impartiality with "tabula rasa" or the theory that people are born as blank slates, with our knowledge only formed along the way through our experiences and perceptions. Impartiality does not entail tabula rasa.

The absence of relationships or lack of opinion on any subject is not what makes a person impartial. Rather, it is the acknowledgment of initial or existing impressions, and the ability to be humble and open enough to rule in favor of where evidence may lie.

Human beings are naturally predisposed to formulate opinions, which may form into biases or inclinations, as it is inherent in our survival as a species to make constant value judgments on what is beneficial or detrimental to us. Instead of a constant state of absolute neutrality, it is the exhibition of openness to alter one's initial opinion that signifies impartiality. Impartiality does not mean coming to the court as a blank slate, which is inherently impossible. When Justices are appointed to the Supreme Court, they bring with them their experiences, philosophy, and values. What the job requires is the independence of the mind, not a completely blank slate.

Protestant's claims that Justice Leonen lobbied for the dismissal of his protest is belied by this Tribunal's October

15, 2019 Resolution[66] which released the results of the revision and appreciation of ballots from protestant's pilot provinces. The final tally showed an increase of protestee's lead over protestant:

> Thus, based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. After the revision and appreciation, the lead of protestee Robredo increased from 263,473 to 278,566.[67]

Despite the results of the revision and appreciation process, Justice Leonen did not vote for the immediate dismissal of this protest. Instead, he joined the majority in directing the parties to file their respective memoranda on the results and on protestant's Third Cause of Action to protect the parties' right to due process. This Tribunal stated:

> Before the Tribunal proceeds to make a ruling on the effects of the results of the revision and appreciation of the votes for the pilot provinces on the Protestant's Second Cause of Action as articulated in the Preliminary Conference Order, the Parties will be required to submit their position stating their factual and legal basis (*sic*).
>
> Likewise, the Tribunal deems it essential to meet due process requirements to require protestant and protestee to now provide their position in relation to the Third Cause of Action also articulated in the Preliminary Conference Order. The Tribunal notes the pending Motion for Technical Examination dated July 10, 2017 and Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated December 10, 2018, as well as protestee's Manifestation dated October 14, 2019, and the earlier deferments made by the Tribunal of the various issues related to the Third Cause of Action.
>
> This controversy has spawned very serious but unfounded and careless speculations on the part of many partisan observers who, on the basis of incomplete information, would rather latch on to their

---

[66] *Marcos v. Robredo*, P.E.T. Case No. 005, October 15, 2019, <https://sc.judiciary.gov.ph/7752/> [Per Curiam, Presidential Electoral Tribunal].

[67] Id. at 58.

favorite conspiratorial theories rather than critically examine the facts and the law involved in this case. This Tribunal, however, will comply with its constitutionally mandated duty allowing the parties the opportunity to examine the results of the revision and appreciation of the pilot provinces as well as comment so that they are fully and fairly heard on all the related legal issues. Based on the submissions of the parties, the Tribunal can therefore confidently and judiciously deliberate on the proper course of action as clarified by the actual position of the parties on the common issues that we have identified.[68]

Clearly, Justice Leonen's votes in the present case do not support protestant's narrative of a partial and vengeful magistrate who had already prejudged protestant and his entire family.

III. B.

Protestant and the Solicitor General's ground to inhibit Justice Leonen for dissenting in *Ocampo v. Enriquez*[69] fails to persuade.

First, *protestant is not President Marcos*. They are two different people. All the quoted portions of Justice Leonen's opinion which are allegedly biased against President Marcos are irrelevant here.

Second, when Justice Leonen analyzed the arguments, weighed the evidence, and arrived at a conclusion in that case, he was not exhibiting bias. Rather, he was exercising his judicial function. To put in elementary terms, he was simply doing his job.

In the same manner, when the other Justices voted for the majority, they were not exhibiting bias but merely exercising their judicial functions.

Protestant and the Solicitor General posit that by not joining the majority in *Ocampo*, Justice Leonen can no longer be impartial in the present case. Following their logic, the rest of the Supreme Court in *Ocampo*, who voted either with or against the majority, would likewise be incapable of being impartial

---

[68] Id.

[69] 798 Phil. 227, 519-637 (2016) [Per J. Peralta, En Banc].

in this case and will always vote as he or she did in *Ocampo* in future cases involving the Marcos family. This would then lead to an absurd scenario where all the justices will have to inhibit for either voting for or against a party when a new case is filed against that party.

This conclusion is plainly unacceptable.

Protestant and the Solicitor General quote heavily from Justice Leonen's dissenting opinion in *Ocampo*, claiming that the quoted portions demonstrate Justice Leonen's bias against protestant.

In particular, protestant and the Solicitor General take exception to Justice Leonen's explanation on why former President Marcos should not have been buried in the Libingan ng mga Bayani, namely: that he was not a hero;[70] that he invented his supposed medals of honor;[71] that he allowed his family, associates, and cronies to plunder the Philippine coffers;[72] that even the Supreme Court, throughout the decades, has identified him to be an authoritarian and dictator, and held that Swiss deposits in the amount of US$658,175,373.60 under the name of the Marcoses had been ill-gotten wealth, to be forfeited in favor of the government;[73] and that the abuses during his regime caused suffering for millions of Filipinos.[74] Both protestant and the Solicitor General also claim that Justice Leonen's prejudice against protestant is apparent because his dissenting opinion mentioned the accountability of President Marcos' relatives for certain offenses committed during his regime.[75]

Justice Leonen's description of President Marcos' regime and its effect on the nation was based on law, history, and

---

[70] Strong Manifestation with Extremely Urgent Omnibus Motion, p. 6.

[71] Id. at 7.

[72] OSG Omnibus Motion, pp. 7-8.

[73] Id. at 9.

[74] Id. at 7-8.

[75] OSG Motion for Inhibition, p. 11; and Strong Manifestation with Extremely Urgent Omnibus Motion, p. 7.

jurisprudence. The Supreme Court has repeatedly described the Marcos regime as authoritarian, referred to "the Marcoses and their cronies"; acknowledged the illegal wealth the Marcoses stashed away which the government has been attempting to recover; and noted the suffering the Marcos regime had wrought on the Filipino people.

In *Mijares v. Ranada*[76], the Supreme Court lamented the nation's pains in the aftermath of the Marcos regime:

> Our martial law experience bore strange unwanted fruits, and we have yet to finish weeding out its bitter crop. While the restoration of freedom and the fundamental structures and processes of democracy have been much lauded, according to a significant number, the changes, however, have not sufficiently healed the colossal damage wrought under the oppressive conditions of the martial law period. The cries of justice for the tortured, the murdered, and the *desaparecidos* arouse outrage and sympathy in the hearts of the fair-minded, yet the dispensation of the appropriate relief due them cannot be extended through the same caprice or whim that characterized the ill-wind of martial rule. The damage done was not merely personal but institutional, and the proper rebuke to the iniquitous past has to involve the award of reparations due within the confines of the restored rule of law.[77]

Similarly, in *Marcos v. Manglapus*,[78] the Supreme Court noted the hardships the nation faced in rebuilding itself after the Marcos regime, and recognized the government's efforts to recover the illegal wealth "stashed away by the Marcoses in foreign jurisdictions":

> This case is unique. It should not create a precedent, for the case of a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country and who within the short space of three years seeks to return, is in a class by itself.
>
> . . . .

---

[76] 495 Phil. 372 (2005) [Per J. Tinga, Second Division].

[77] Id. at 375.

[78] 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

We cannot also lose sight of the fact that the country is only now beginning to recover from the hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives, many of whom are still here in the Philippines in a position to destabilize the country, while the Government has barely scratched the surface, so to speak, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions. Then, We cannot ignore the continually increasing burden imposed on the economy by the excessive foreign borrowing during the Marcos regime, which stifles and stagnates development and is one of the root causes of widespread poverty and all its attendant ills. The resulting precarious state of our economy is of common knowledge and is easily within the ambit of judicial notice.[79]

Galman v. Sandiganbayan,[80] illustrated how President Marcos' use of his authoritarian powers corrupted the judicial process and rule of law:

Last August 21st, our nation marked with solemnity and for the first time in freedom the third anniversary of the treacherous assassination of foremost opposition leader former Senator Benigno "Ninoy" Aquino, Jr. imprisoned for almost eight years since the imposition of martial law in September, 1972 by then President Ferdinand E. Marcos, he was sentenced to death by firing squad by a military tribunal for common offenses alleged to have been committed long before the declaration of martial law and whose jurisdiction over him as a civilian entitled to trial by judicial process by civil courts he repudiated….

The record shows suffocatingly that from beginning to end, the then President used, or more precisely, misused the overwhelming resources of the government and his authoritarian powers to corrupt and make a mockery of the judicial process in the Aquino-Galman murder cases. As graphically depicted in the Report, *supra*, and borne out by the happenings (*res ipsa loquitura*), since the resolution prepared by his "Coordinator," Manuel Lazaro, his Presidential Assistant on Legal Affairs, for the Tanodbayan's dismissal of the cases against all accused was unpalatable (it would summon the demonstrators back to the streets) and at any rate was not acceptable to the Herrera

[79] Id. at 492-509.

[80] 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc].

prosecution panel, the unholy scenario for acquittal of all 26 accused after the rigged trial as ordered at the Malacañang conference, would accomplish the two principal objectives of satisfaction of the public clamor for the suspected killers to be charged in court and of giving them through their acquittal the legal shield of double jeopardy.[81]

Quoting Justice Leonen's dissenting opinion that the law "implies that not only was [Ferdinand E. Marcos] the President that presided over. . . violations, but that he and his spouse, relatives, associates, cronies, and subordinates were active participants,"[82] the Solicitor General argues that Justice Leonen seems to suggest that certain Marcos relatives bear some accountability for what transpired during President Marcos' regime.[83] However, this suggestion is not new in our system of laws and jurisprudence.

Republic v. Sandiganbayan[84] recognized the gargantuan task the government faced in relation to the Marcoses and their illegal wealth—referring to the Marcoses, and not only to President Marcos:

> The EDSA revolution in February 1986 swept the Marcoses out of power. One of the first official acts of then President Corazon C. Aquino was the creation of the Presidential Commission on Good Government (PCGG) under E.O No. 1. It was given the difficult task of recovering the illegal wealth of the Marcoses, their family, subordinates and close associates. In due time, the Marcoses and their cronies had to face a flurry of cases, both civil and criminal, all designed to recover the Republic's wealth allegedly plundered by them while in power.[85]

Moreover, the assessment in Justice Leonen's dissenting opinion is supported not only by jurisprudence, but by Republic

---

[81] Id. at 53-83.

[82] OSG Omnibus Motion, p. 11.

[83] OSG Omnibus Motion, p. 13.

[84] 300 Phil. 765 (1994) [Per J. Puno, En Banc].

[85] Id. at 769.

Act No. 10368, or the Human Rights Victims Reparation and Recognition Act of 2013. Indeed, the Solicitor General omitted the extensive discussion on the Human Rights Victims Reparation and Recognition Act of 2013 which immediately preceded Justice Leonen's statement regarding the accountability of the Marcoses. This discussion is reproduced here:

> Republic Act No. 10368 provides for both government policy in relation to the treatment of Martial Law victims as well as these victims' reparation and recognition. It creates a Human Rights Victims' Claims Board and provides for its powers. Among the powers of the Board is to "approve with finality all eligible claims" under the law.
>
> This law provides for the process of recognition of Martial Law victims. There are victims who are allowed to initiate their petitions, those who are conclusively presumed, and those who may be *motu proprio* be recognized by the Board even without an initiatory petition.
>
> Republic Act No. 10368 codifies four (4) obligations of the State in relation to the Martial Law regime of Ferdinand E. Marcos:
>
> First, to recognize the heroism and sacrifices of victims of summary execution, torture, enforced or involuntary disappearance, and other gross violations of human rights;
>
> Second, to restore the honor and dignity of human rights victims;
>
> Third, to provide reparation to human rights victims and their families; and
>
> Fourth, to ensure that there are effective remedies to these human rights violations.
>
> Based on the text of this law, human rights violations during the "regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986" are recognized. Despite his claim of having won the snap elections for President in 1985, Ferdinand E. Marcos was unceremoniously spirited away from Malacañang to Hawaii as a result of the People's uprising now known as "People Power." The legitimacy of his ouster from power was subsequently acknowledged by this Court in *Lawyers' League for a Better Philippines* and in *In re Saturnino Bernardez*, which were both decided in 1986.
>
> This recognition of human rights violations is even clearer in the law's definition of terms in Republic Act No. 10368, Section 3 (b):

(b) Human rights violation refers to any act or omission committed during the period from September 21, 1972 to February 25, 1986 by persons acting in an official capacity and/or agents of the State, but shall not be limited to the following:

(1) Any search, arrest and/or detention without a valid search warrant or warrant of arrest issued by a civilian court of law, including any warrantless arrest or detention carried out pursuant to the declaration of Martial Law by former President Ferdinand E. Marcos as well as any arrest, detention or deprivation of liberty carried out during the covered period on the basis of an Arrest, Search and Seizure Order (ASSO), a Presidential Commitment Order (PCO), or a Preventive Detention Action (PDA) and such other similar executive issuances as defined by decrees of former President Ferdinand E. Marcos, or in any manner that the arrest, detention or deprivation of liberty was effected;

(2) The infliction by a person acting in an official capacity and or an agent of the State of physical injury, torture, killing, or violation of other human rights, of any person exercising civil or political rights, including but not limited to the freedom of speech, assembly or organization; and/or the right to petition the government for redress of grievances, even if such violation took place during or in the course of what the authorities at the time deemed an illegal assembly or demonstration: Provided, That torture in any form or under any circumstance shall be considered a human rights violation;

(3) Any enforced or involuntary disappearance caused upon a person who was arrested, detained or abducted against one's will or otherwise deprived of one's liberty, as defined in Republic Act No. 10350, otherwise known as the 'Anti-Enforced or Involuntary Disappearance Act of 2012.';

(4) Any force or intimidation causing the involuntary exile of a person from the Philippines;

(5) Any act of force, intimidation or deceit causing unjust or illegal takeover of a business, confiscation of property, detention of owner/s and or their families, deprivation of livelihood of a person by agents of the State, including those caused by Ferdinand E. Marcos, his spouse Imelda

> R. Marcos, their immediate relatives by consanguinity or affinity, as well as those persons considered as among their close relatives, associates, cronies and subordinates under Executive Order No. 1, issued on February 28, 1986 by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution;'
>
> (6) Any act or series of acts causing, committing and/or conducting the following:
>
> "i) Kidnapping or otherwise exploiting children of persons suspected of committing acts against the Marcos regime;
>
> "(ii) Committing sexual offenses against human rights victims who are detained and/or in the course of conducting military and/or police operations; and
>
> "(iii) Other violations and/or abuses similar or analogous to the above, including those recognized by international law."

Human rights violations during Martial Law were state-sponsored. Thus, Republic Act No. 10368, Section 3 (c) defines Human Rights Victims as:

> (c) Human Rights Violations Victim (HRVV) refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from September 21, 1972 to February 25, 1986: Provided however, That victims of human rights violations that were committed one (1) month before September 21, 1972 and one (1) month after February 25, 1986 shall be entitled to reparation under this Act if they can establish that the violation was committed:
>
> (1) By agents of the State and/or persons acting in an official capacity as defined hereunder;
> (2) For the purpose of preserving, maintaining, supporting or promoting the said regime; or
> (3) To conceal abuses during the Marcos regime and/or the effects of Martial Law.

Section 3 (d) of this law defines the violators to include persons acting in an official capacity and/or agents of the State:

> (d) Persons Acting in an Official Capacity and/or Agents of the State. — The following persons shall be deemed persons acting in an official capacity and/or agents of the State under this Act:
>
> > (1) Any member of the former Philippine Constabulary (PC), the former Integrated National Policy (INP), the Armed Forces of the Philippines (AFP) and the Civilian Home Defense Force (CHDF) from September 21, 1972 to February 25, 1986 as well as any civilian agent attached thereto: and any member of a paramilitary group even if one is not organically part of the PC, the INP, the AFP or the CHDF so long as it is shown that the group was organized, funded, supplied with equipment, facilities and/or resources, and/or indoctrinated, controlled and/or supervised by any person acting in an official capacity and/or agent of the State as herein defined;
> >
> > (2) Any member of the civil service, including persons who held elective or appointive public office at any time from September 21, 1972 to February 25, 1986;
> >
> > (3) Persons referred to in Section 2 (a) of Executive Order No. 1, creating the Presidential Commission on Good Government (PCGG), issued on February 28, 1986 and related laws by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution, ***including former President Ferdinand E. Marcos, spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as their close relatives, associates, cronies and subordinates***; and
> >
> > (4) Any person or group/s of persons acting with the authorization, support or acquiescence of the State during the Marcos regime.[86] (Emphasis supplied)

Like the cases before that have referred generally to the Marcoses and their cronies, and the need to recover their illegally gotten wealth, Republic Act No. 10368 itself expressly mentions

---

[86] Id. at 578-586.

President Marcos, Imelda R. Marcos, and their immediate relatives by consanguinity or affinity, as well as their close relatives. Thus, the conclusion in Justice Leonen's dissenting opinion, that Republic Act No. 10368 implies that Marcos' spouse, relatives, associates, cronies, and subordinates were active participants is based on the text of Republic Act No. 10368.

Justice Leonen's dissenting opinion did not introduce in this jurisdiction the terminology and concepts objected to in the Motions for Inhibition.

III. C.

We are deeply disturbed that the Solicitor General gravely imputes gross ignorance of the law to the Supreme Court when it ruled in *Chavez v. Marcos*.[87]

To recall, *Chavez* involved 33 consolidated criminal cases filed against Imelda R. Marcos (Imelda), among others, for violations of Section 4 of Central Bank Circular No. 960, in relation to Section 34 of Republic Act No. 265, or the Central Bank Act. It was decided in Imelda's favor, who was acquitted of the charges.

This favorable ruling notwithstanding, the Solicitor General claims that Justice Leonen's "partiality against the Marcoses has led to a Decision in *Francisco I. Chavez v. Imelda R. Marcos* which exhibits lack of competence and probity."[88] It is unclear how *Chavez* lacked competence and probity and why it solely falls on Justice Leonen's shoulders.

Further, the Solicitor General assails "why and how the acquittal led to a full-blown Supreme Court case." He also asserts that the issues resolved in *Chavez* were "unexpected," but allegedly did not discuss a number of issues raised in Imelda's favor. However, he failed to elaborate on these points.

---

[87] G.R. No. 185484, June 27, 2018, 868 SCRA 251 [Per J. Leonen, Third Division].

[88] OSG Omnibus Motion, p. 14.

Finally, despite *Chavez* having been decided in Imelda's favor, the Solicitor General asserts that she ultimately lost because she had to re-litigate the case for more than ten (10) years. No legal or factual basis is cited to substantiate this claim, nor was there any ground to find Justice Leonen responsible for the alleged 10-year "re-litigation".

Each case has its own unique set of facts and circumstances. Some cases may appear to be similar but have different outcomes. Further, courts need not rule on every conceivable issue, particularly when the issue does not affect the result.[89]

To move for the inhibition of a justice because of a perceived notion of bias or partiality against a party based on past decisions would not hold water. Ironically, it was protestant himself who gave evidence of Justice Leonen's impartiality when he cited a case where Justice Leonen voted for members of the Marcos family.

III. D.

Drafts yet to be voted on are confidential because they merely form part of the internal deliberations of the Supreme Court, and may later change. They may be adopted by the Member-in-Charge, ripen to a concurring or dissenting opinion, or withdrawn altogether. Until the members of the Court vote on a matter, a position in a draft is temporary. Therefore, drafts for the Court's deliberations should not be taken against any Justice who, again, is *simply doing his or her job*.

We stress that certain information "contained in the records of cases before the Supreme Court are considered confidential and exempt from disclosure."[90] In a February 14, 2012 Notice

---

[89] *See Macababbad, Jr. v. Masirag,* 596 Phil. 76 (2009) [Per J. Brion, Second Division].

[90] *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*, p. 12 (February 14, 2012) [Per Curiam, En Banc].

in response to the Impeachment Prosecution Panel's request for access to court records, the Supreme Court stated that its internal rules prohibited the disclosure of the following information:

> **(1)** the result of the ***raffle of cases,*** **(2)** ***the actions taken by the Court*** on each case included in the agenda of the Court's session, and **(*3*) *the deliberations of the Members in court sessions on cases and matters pending before it*.**[91] (Emphasis supplied)

Court deliberations are generally considered to be privileged communication,[92] making it one of the exceptions to the constitutional right to information.[93]

In *In Re: Production of Court Records and Documents and the Attendance of Court Officials and Employees as Witnesses*,[94] the Supreme Court, citing Justice Abad's concurring opinion in *Arroyo v. De Lima*, explained that the deliberative process privilege was necessary to precipitate a free discussion of issues among its members without fear of criticism or humiliation in case a member went against the popular opinion:

> Justice Abad discussed the rationale for the rule in his concurring opinion to the Court Resolution in Arroyo v. De Lima (TRO on Watch List Order case): the rules on confidentiality will enable the Members of the Court to "freely discuss the issues without fear of criticism for

---

[91] *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*, p. 12 (February 14, 2012) [Per Curiam, En Banc].

[92] Internal Rules of the Supreme Court, Rule 10, Section 2- Confidentiality of court sessions - Court sessions are executive in character, with only the Members of the Court present. Court deliberations are confidential and shall not be disclosed to outside parties, except as may be provided herein or as authorized by the Court.

[93] *Department of Foreign Affairs v. BCA International Corp*., G.R. No. 210858, [June 29, 2016] [Per J. Carpio, Second Division].

[94] February 14, 2012 [Per Curiam, En Banc].

holding unpopular positions" or fear of humiliation for one's comments. The privilege against disclosure of these kinds of information/ communication is known as deliberative process privilege, involving as it does the deliberative process of reaching a decision. "Written advice from a variety of individuals is an important element of the government's decision-making process and that the interchange of advice could be stifled if courts forced the government to disclose those recommendations;" the privilege is intended "to prevent the 'chilling' of deliberative communications."[95] (Citations omitted)

The deliberative process privilege is not exclusive to the Judiciary and is enjoyed by any agency or body whose functions involve deliberations or candid discussions before arriving at a final policy or resolution.[96] Aside from allowing an unfettered exchange of ideas, *Department of Foreign Affairs v. BCA International Corp.*[97] also explained that the deliberative process privilege is necessary to prevent "public confusion from premature disclosure of agency opinions before the agency establishes final policy."[98]

We note that unauthorized disclosure, sharing, publication, or use of confidential documents or any of its contents is classified as a grave offense. The Tribunal could have proceeded to the issuance of show cause orders against the Solicitor General and Canlas for procuring, aiding and encouraging the leakage of sensitive and confidential materials. However, in order that this Tribunal may be in a better position to focus on the merits of the issues raised by the parties in this already contentious

---

[95] *In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012*, February 14, 2012, <https://www.officialgazette.gov.ph/downloads/2012/02feb/20120214-Notice-of-Resolution.pdf> 14 [Per Curiam, En Banc].

[96] *Department of Foreign Affairs v. BCA International Corp.*, 788 Phil. 704, 735 (2016) [Per J. Carpio, Second Division].

[97] *Department of Foreign Affairs v. BCA International Corp.*, 788 Phil. 704 (2016) [Per J. Carpio, Second Division].

[98] Id. at 735.

case, the Tribunal for now sees fit to remind the parties that the deliberative process privilege enjoys absolute confidentiality and exhorts them to accord it respect.

IV

The standing asserted by the Solicitor General should be reviewed. "People's Tribune" is not to be hoisted wantonly in big ticket cases involving private parties.

People's Tribune has been defined as:

> [A]n instance when the Solicitor takes a position adverse and contrary to the Government's because it is incumbent upon him to present to the Court what he considers would legally uphold government's best interest, although the position may run counter to a client's position.[99]

The Office of the Solicitor General is the law office of the government. Its default client is the Republic of the Philippines, but ultimately, "the distinguished client of the Office of the Solicitor General is the people themselves."[100] Its status as People's Tribune is properly invoked only if the Republic of the Philippines is a party litigant to the case.

Here, the Republic of the Philippines is not a party litigant. Protestant filed this election protest in his bid to oust the elected Vice President. Simply, this involves private individuals only. Yet the Solicitor General comes to this Tribunal without, at the very least, asking for leave of court as courtesy to this Tribunal.

Basic procedure dictates that parties must move for leave if they seek any action from this Tribunal. With more reason should a nonparty file the appropriate motion to intervene in a case not concerning them.

This Tribunal reminds the Office of the Solicitor General that it has been previously admonished that "[i]n future cases,

---

[99] 1987 ADM. CODE, ch. 12, title III, book IV, sec. 35.

[100] *Gonzales v. Chavez*, 282 Phil. 858, 889 (1992) [Per J. Romero, En Banc].

however, the Office of the Solicitor General should be more cautious in entering its appearance to this Court as the People's Tribune to prevent further confusion as to its standing."[101]

If indeed the Solicitor General was genuinely concerned about the protracted resolution of the protest and its effect on the people who "deserves nothing less,"[102] then he should have confined the issue to the supposed delay in the resolution of the protest, as this was the only matter with relevance to the public. Instead, the Solicitor General imputed impartiality and incompetence not only against a sitting member of this Tribunal but also against the entire body.

We echo the Solicitor General's arguments and counsel him to "conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired."[103] Lamenting a decision he posits as unfavorable to a particular family[104] and lackadaisically invoking People's Tribune are not hallmarks of a high-ranking government official on whom public trust is reposed.

The Solicitor General should have been more circumspect before he cited unsubstantiated news articles. The parties are likewise cautioned to refrain from using language that undermines the credibility and respect due to this Tribunal.

When the Motions for Inhibition were heard by the Tribunal, there was a unanimous vote to issue a show cause order against the Solicitor General and Canlas. However, when the Resolution was being finalized, the member-in-charge sent a letter to the other members of the Tribunal to appeal for the withdrawal of the show cause order. The letter reads:

---

[101] J. Leonen, Dissenting Opinion in *Umali v. Judicial and Bar Council*, 814 Phil. 253, 319-320 (2017) [Per J. Velasco, Jr., En Banc].

[102] OSG Omnibus Motion, p. 24.

[103] OSG Omnibus Motion, p. 29.

[104] OSG Omnibus Motion, p. 16.

Dear Chief Justice and Colleagues:

In order that this Court be in a better position to focus on the merits of the issues raised by the parties in this already contentious contest, I propose to remove the show cause orders as a result of the Motion for Inhibition filed by the Office of the Solicitor General in the *per curiam* Resolution denying the inhibition. Any matter relating to the participation of the Solicitor General may be addressed separately at a much later time upon the Court *En Banc*'s collective discretion.

Should you have any objection to this approach, kindly inform the undersigned before the Court *En Banc* deliberations.

Forgiveness is often the more decent consequence to another's misunderstanding. It will certainly not diminish us.

Thank you.

The resolution of the electoral protest is of utmost importance. Thus, the member-in-charge urged the Tribunal to focus on the merits of the case and suggested that matters not directly related to the issues in the electoral protest, such as the Office of the Solicitor General's statement that it is acting as the People's Tribune and its breach of confidentiality, may be addressed separately at a much later time.

For now, the Tribunal recognizes that forgiveness and toleration may be the most decent response to misguided acts done due to counsel's and the Solicitor General's misunderstandings. The parties, their counsels, and all others acting for and on their behalf are all put on notice to be more circumspect in their pleadings and in their public pronouncements. All counsels including the Solicitor General are reminded to attend to their cases with the objectivity and dignity demanded by our profession and keep their passions and excitement in check.

IN VIEW OF THE FOREGOING, this Tribunal resolves to **DENY** protestant's Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020.

The Office of the Solicitor General's Omnibus Motion (Motion for Inhibition of Associate Justice Marvic M.V.F. Leonen and Reraffle) also dated November 9, 2020 is **NOTED WITHOUT ACTION**.

The protestee's Countermanifestation (to the Strong Manifestation with Extremely Urgent Omnibus Motion for the: I. Inhibition of Associate Justice Mario Victor F. Leonen; II. Re-raffle of this Election Protest; III. Resolution of all the Pending Incidents in the Above Entitled Case dated November 9, 2020) is **NOTED**.

Let a copy of this Resolution be also personally served on the Office of the Solicitor General.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Carandang and *Lazaro-Javier, JJ.*, on wellness leave.

EN BANC

[A.C. No. 12536. November 17, 2020]
(Formerly CBD 12-3298)

IN RE: SUPREME COURT (FIRST DIVISION) NOTICE OF JUDGMENT DATED DECEMBER 14, 2011 IN G.R. NO. 188376, *Petitioner v.* **ATTY. CONCHITA C. MIÑAS,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; WILLFUL VIOLATION OF THE LAW AND BLATANT DISREGARD OF ESTABLISHED RULES CONSTITUTE GROSS MISCONDUCT.— "A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor." Misconduct is defined as "an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official." It is considered a grave offense in cases where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present.

In this case, there is no question that Atty. Miñas had knowingly violated the law and disregarded established rules when she issued the Order dated October 30, 2008 in order to resume the implementation of the Alias Writ of Execution dated September 14, 2005.

For one thing, Atty. Miñas herself had ordered all actions done in compliance with the Alias Writ of Execution to be quashed and rendered with no force and effect, in view of the Court's *status quo ante* order in the Resolution dated October 24, 2005.

For another, it is undisputed that Atty. Miñas issued the Order dated October 30, 2008 *after* the Court's Decision dated October 11, 2007 in G.R. No. 157903 attained finality. To recall, the Court in *Suntay* directed the RTC to conduct further proceedings to determine the proper just compensation of the expropriated property. Thus, when Atty. Miñas ordered the DARAB sheriffs

to resume implementation of the Alias Writ of Execution, she disregarded not only the Court's final and executory ruling in *Suntay*, but also, she ended up substituting her own judgment (per her Decision dated January 24, 2001 in DARAB Case No. V-0405-0001-00) as to the amount of just compensation that should be paid by Land Bank for the expropriated property.

2. ID.; ID.; ID.; ID.; GOOD FAITH; KNOWLEDGE OF THE FINALITY OF A DIRECTIVE OF THE COURT ON THE PROPER JUST COMPENSATION OF AN EXPROPRIATED PROPERTY BELIES THE DEFENSE OF GOOD FAITH IN ORDERING THE IMPLEMENTATION OF A WRIT OF EXECUTION.— [T]he Court simply cannot accept the defense of good faith of Atty. Miñas as she was well aware of the finality of the *Suntay* ruling when she issued the Order dated October 30, 2008. She had known that in issuing said Order, she effectively contradicted the Court's directive in *Suntay* for the RTC to determine the proper just compensation of the expropriated property. Even assuming *arguendo* that the *Suntay* ruling was erroneous, Atty. Miñas is expected to know that a final and executory judgment can no longer be modified in any respect by the court which rendered it or even by the Supreme Court.

To be clear, good faith denotes "honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry" or the lack of all information, notice, benefit or belief of facts which would render one's actions unconscientious. Here, Atty. Miñas' knowledge of the finality of the *Suntay* ruling is enough to belie her defense of good faith.

3. ID.; ID.; A REGIONAL ADJUDICATOR OF THE DEPARTMENT OF AGRARIAN REFORM WHOSE DUTY IS TO DECIDE CONFLICTING CLAIMS IS BURDENED WITH A HIGH DEGREE OF SOCIAL RESPONSIBILITY. — Atty. Miñas, as a regional adjudicator, was tasked with the duty of deciding conflicting claims of the parties as a part of the quasi-judicial system of our government. As such, by analogy, the instant case may be likened to administrative cases against judges.

. . .

As a keeper of the public faith, Atty. Miñas is burdened with a high degree of social responsibility. Indubitably, her conduct in this case fell short of the integrity and good moral character required from all lawyers, especially from one occupying a public office.

4. ID.; ID.; GROSS IGNORANCE OF THE LAW; PROFESSIONAL INCOMPETENCE; FAILURE TO KNOW OR OBSERVE THE BASIC LAWS AND PROCEDURAL RULES AFFECTING ONE'S OFFICIAL FUNCTION IS TANTAMOUNT TO PROFESSIONAL INCOMPETENCE AND GROSS IGNORANCE OF THE LAW.— Atty. Miñas, as a regional adjudicator and a member of the Bar, is expected to be well-versed on legal procedures, most especially those which affect her official functions in the RARAD. This expectation is imposed upon all members of the legal profession because membership in the Bar is in the category of a mandate for public service of the highest order. It is quite hard to believe that Atty. Miñas is unaware of these procedural rules, considering that she is a recipient of the Most Outstanding RARAD award for several years.

. . . Atty. Miñas perilously stretched the DARAB Rules by declaring her Decision dated January 24, 2001 final and executory despite the pendency of Agrarian Case No. R-1241 and in complete disregard of Section 57 of RA 6657 which vests original and exclusive jurisdiction over all petitions for the determination of just compensation to Special Agrarian Courts. Verily, where her own decision was assailed either on appeal or by original court action, proper judicial temperament as adjudicator dictates upon Atty. Miñas to be more circumspect and judicious and *not* preempt the court on the latter's action on the petition filed with it.

While it is true that a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice, it is equally true that when the law violated by the judge is elementary, the failure to know or observe it constitutes gross ignorance of the law which makes a judge subject to disciplinary action.

For these reasons, the Court finds the actuations of Atty. Miñas tantamount to punishable professional incompetence and gross ignorance of the law.

5. ID.; ID.; WILLFULL DISOBEDIENCE TO A LAWFUL ORDER OF THE SUPREME COURT; VIOLATION OF THE LAWYER'S OATH; DISREGARDING A FINAL AND IMMUTABLE DECISION OF THE HIGHEST COURT OF THE LAND IS TANTAMOUNT TO WILLFUL DISOBEDIENCE TO A LAWFUL ORDER OF THE COURT, AS WELL AS A VIOLATION OF THE LAWYER'S OATH.— [I]t is undisputed that the Court's Decision dated October 11, 2007 in G.R. No. 157903 became final and executory on March 19, 2008. Thus, when Atty. Miñas issued the Order dated October 30, 2008 to enforce her Decision dated January 24, 2001 in DARAB Case No. V-0405-0001-00, she effectively *varied*, *altered*, *changed*, or otherwise *disregarded* the Court's ruling in G.R. No. 157903 which left the determination of the just compensation of Suntay's expropriated property to the RTC.

This the Court cannot countenance. All lawyers are expected to recognize the authority of the Supreme Court and to obey its lawful processes and orders, and if Atty. Miñas has not taken this to heart, then she is unfit to engage in the practice of law.

. . .

Further, the Lawyer's Oath imposes upon all members of the Bar the duty "[to] support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein x x x."

The Court also considers Atty. Miñas' issuance of the Order dated October 30, 2008 tantamount to willful disobedience of the Decision dated October 11, 2007 in G.R. No. 157903.

6. ID.; ID.; ID.; THE PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW, INSTEAD OF DISBARMENT, IS SUFFICIENT FOR A FIRST TIME OFFENDER.— [T]he Court may unquestionably impose against Atty. Miñas the penalty of disbarment from the practice of law for her actions which constitutes gross misconduct and gross ignorance of the law in breach of the CPR and the Lawyer's Oath, as well as willful disobedience of a lawful order of the Supreme Court. Nevertheless, considering that this is the first offense for Atty. Miñas, the Court deems the penalty of suspension from the practice of law for a period of two years as sufficient sanction against her to protect the public and the legal profession.

APPEARANCES OF COUNSEL

Angelito W. Chua Law Office for respondent.

D E C I S I O N

INTING, *J.*:

The instant administrative case arose in connection with the Court's Decision[1] dated December 14, 2011 in the case of "*Land Bank of the Phils. v. Suntay*" which directed the Integrated Bar of the Philippines (IBP) to investigate the actuations of Atty. Conchita C. Miñas (Atty. Miñas) in Department of Agrarian Reform Adjudication Board (DARAB) Case No. V-0405-0001-00, and to determine any possible administrative liabilities on her part as a member of the Philippine Bar.[2]

The Antecedents[*]

In 1972, the Department of Agrarian Reform (DAR) expropriated 948.1911 hectares of Federico Suntay's (Suntay) land situated in Sta. Lucia, Sablayan, Occidental Mindoro pursuant to Presidential Decree No. (PD) 27.[3] Land Bank of the Philippines (Land Bank) and the DAR fixed the value of the expropriated property at ₱4,497.50 per hectare, or a total valuation of ₱4,251,141.68. Suntay, however, rejected the DAR valuation and filed a petition for determination of just compensation with the Office of the Regional Agrarian Reform

---

[1] 678 Phil. 879 (2011); penned by Associate Justice Lucas P. Bersamin with Chief Justice Renato C. Corona, and Associate Justices Teresita J. Leonardo-De Castro, Mariano C. Del Castillo and Martin S. Villarama, Jr., concurring.

[2] *Id.* at 929.

[*] The facts are essentially nulled from the Court's Decision in *Land Bank of the Phils. v. Suntay*, *supra* note 1.

[3] Entitled, "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism therefor," approved on October 21, 1972.

Adjudicator (RARAD) of Region IV, DARAB, docketed as DARAB Case No. V-0405-0001-00. The petition was assigned to Atty. Miñas.[4]

On January 24, 2001,[5] Atty. Miñas rendered a Decision[6] in DARAB Case No. V-0405-0001-00 fixing the just compensation for the expropriated property at ₱166,150.00 per hectare or ₱157,541,951.30 in total. Land Bank moved for reconsideration, but Atty. Miñas denied the motion on March 14, 2001.[7]

This prompted Land Bank to file a petition for judicial determination of just compensation before Branch 46, Regional Trial Court (RTC), San Jose, Occidental Mindoro as a Special Agrarian Court impleading Suntay and Atty. Miñas. In its petition, docketed as Agrarian Case No. R-1241, Land Bank essentially prayed that the total just compensation for the expropriated property be fixed on the basis of the DAR's original valuation thereof at ₱4,251,141.67.[8]

Despite the pendency of Agrarian Case No. R-1241, Atty. Miñas issued an Order of Finality dated May 22, 2001 declaring the Decision dated January 24, 2001 final and executory. Subsequently, an Order[9] dated May 23, 2001 was issued granting Suntay's *ex-parte* motion for immediate execution of said Decision.

Land Bank contested the Order of Finality dated May 22, 2001 through a motion for reconsideration, but Atty. Miñas denied the motion on July 10, 2001. Thereafter, Atty. Miñas issued a Writ of Execution dated July 18, 2001 directing the Regional Sheriff of DARAB Region IV to implement the Decision dated January 24, 2001.[10]

---

[4] *Land Bank of the Phils. v. Suntay, supra* note 1 at 883-884.

[5] Erroneously dated as January 24, 2000, *rollo*, Vol. I, p. 186.

[6] *Id.* at 174-186.

[7] *Land Bank of the Phils. v. Suntay, supra* note 1 at 884.

[8] *Id.*

[9] *Rollo*, Vol. I, p. 189.

[10] *Land Bank of the Phils. v. Suntay, supra* note 1 at 884-885.

Proceedings in DSCA No. 0252

On September 12, 2001, Land Bank filed a petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO) or preliminary injunction with the DARAB, docketed as DSCA No. 0252, assailing the following issuances of Atty. Miñas:

a) The decision dated January 24, 2001 directing Land Bank to pay Suntay just compensation of ₱157,541,951.30;
b) The order dated May 22, 2001 declaring the decision dated January 24, 2001 final and executory;
c) The order dated July 10, 2001 denying Land Bank's motion for reconsideration; and
d) The writ of execution dated July 18, 2001 directing the sheriff to enforce the decision dated January 24, 2001.[11]

As a result, the DARAB enjoined Atty. Miñas from proceeding with the implementation of the assailed Decision and directed the parties to attend the hearing to determine the propriety of issuing a preliminary or permanent injunction.[12]

On September 20, 2001, Josefina Lubrica, the assignee of Suntay, filed a petition for prohibition before the Court of Appeals (CA) in order to prevent the DARAB from proceeding with DSCA No. 0252. The case was docketed as CA-G.R. SP No. 66710.[13]

In its Decision[14] dated August 22, 2002, the CA granted the petition for prohibition, perpetually enjoined the DARAB from proceeding with DSCA No. 0252, and likewise dismissed it. It ruled that the DARAB had no jurisdiction to take cognizance of DSCA No. 0252 considering that its exercise of jurisdiction

---

[11] *Id.* at 885.

[12] *Id.*

[13] *Id.*

[14] *Rollo*, Vol. I, pp. 202-206; penned by Associate Justice Hilarion L. Aquino with Associate Justices Edgardo P. Cruz and Regalado E. Maambong, concurring.

over a special civil action for *certiorari* has no constitutional or statutory basis.

The DARAB thereafter filed a petition for review on *certiorari* with the Court. The case was docketed as **G.R. No. 159145**.[15]

The Court, in its Decision[16] dated April 29, 2005, affirmed the CA Decision *in toto*. It ruled that the DARAB's limited jurisdiction as a quasi-judicial body does not include the authority to take cognizance of *certiorari* petitions in the absence of an express grant under Republic Act No. (RA) 6657 or the Comprehensive Agrarian Reform Law of 1988, Executive Order No. (EO) 229,[17] and EO 129-A.[18]

Proceedings in Agrarian Case No. R-1241

Meanwhile, in Agrarian Case No. R-1241, Suntay filed a motion to dismiss before the RTC claiming that Land Bank's petition for judicial determination of just compensation had been filed beyond the 15-day reglementary period and by virtue of such tardiness, the Decision dated January 24, 2001 had already become final and executory.[19]

In its Order dated August 6, 2001, the RTC granted the motion and dismissed Land Bank's petition for having been belatedly filed. Land Bank moved for reconsideration, but the RTC denied the motion on August 31, 2001.[20]

---

[15] *Land Bank of the Phils. v. Suntay, supra* note 1 at 886.

[16] *Dept. of Agrarian Reform Adjudication Board v. Lubrica*, 497 Phil. 313 (2005); penned by Associate Justice Dante O. Tinga with Chief Justice Reynato S. Puno (then an Associate Justice) and Associate Justices Maria Alicia Austria-Martinez, and Minita V. Chico-Nazario concurring.

[17] Entitled, "Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program," approved on July 22, 1987.

[18] Entitled, "Modifying Executive Order No. 129 Reorganizing and Strengthening the Department of Agrarian Reform and For Other Purposes," approved on July 26, 1987.

[19] *Land Bank of the Phils. v. Suntay, supra* note 1 at 887.

[20] *Id.*

Consequently, Land Bank elevated the case before the CA *via* a petition for *certiorari*.[21]

In Its Decision[22] dated July 19, 2002, the CA initially granted Land Bank's petition for *certiorari*, nullified the assailed RTC Orders, and permanently enjoined Atty. Miñas from enforcing the Writ of Execution dated July 18, 2001. However, upon Suntay's motion, the CA reconsidered its original ruling, dismissed the special civil action for *certiorari*, and revoked and set aside the injunction against Atty. Miñas from implementing the Writ of Execution dated July 18, 2001.[23]

Aggrieved, Land Bank appealed before the Court on May 6, 2003.[24] The case was docketed as **G.R. No. 157903**.

Alias Writ of Execution dated September 14, 2005

On September 14, 2005, despite the pendency of G.R. No. 157903 with the Court, Atty. Miñas issued an Alias Writ of Execution[25] citing the Court's Decision dated April 29, 2005 in G.R. No. 159145 as basis thereof. Specifically, Atty. Miñas relied on the Court's pronouncement that the RARAD Decision dated January 24, 2001 had already attained finality due to Land Bank's belated filing of its petition for judicial determination of just compensation with the RTC.[26]

Acting pursuant thereto, the DARAB sheriffs issued and served: (a) a notice of demand to Land Bank on September 15,

---

[21] *Id.*

[22] *Rollo*, Vol. I, pp. 223-232; penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conchita Carpio Morales and Mariano C. Del Castillo, concurring.

[23] See Amended Decision dated February 5, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 70015 as penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Mariano Del Castillo, concurring; *id.* at 233-239.

[24] *Land Bank of the Phils. v. Suntay*, *supra* note 1 at 888.

[25] *Rollo*, Vol. I, pp. 243-245.

[26] *Id.* at 244-245.

2005; (b) a notice of levy to Land Bank on September 21, 2005; (c) a notice of levy on the Bank of the Philippine Islands and the Hongkong Shanghai Banking Corporation both on September 28, 2005; and (d) an order to deliver "so much of the funds" in its custody "sufficient to satisfy the final judgment" to Land Bank on October 5, 2005.[27]

The Court's Ruling in G.R. No. 157903

On October 12, 2005, the Court, upon Land Bank's urgent motion, issued a TRO[28] enjoining the RARAD from implementing the Decision dated January 24, 2001 until the case was finally decided.

On October 24, 2005, the Court directed the parties to maintain the *status quo ante*, *viz*.:[29]

> x x x Acting on the petitioner's very urgent manifestation and omnibus motion dated October 21, 2005, the Court Resolves to *DIRECT* the parties to maintain the *STATUS QUO* prior to the issuance of the Alias Writ of Execution dated September 14, 2005. *All actions done in compliance or in connection with the said Writ issued by Hon. Conchita C. Miñas, Regional Agrarian Reform Adjudicator (RARAD), are hereby DEEMED QUASHED, and therefore, of no force and effect.*[30] (Italics in the original and supplied.)

In so doing, the Court effectively revoked all actions done in compliance with the Alias Writ of Execution dated September 14, 2005 issued by Atty. Miñas.

On October 23, 2005, Atty. Miñas reversed her ruling and quashed all acts done pursuant to the Alias Writ of Execution dated September 14, 2005 in view of the Court's Resolution dated October 24, 2005 in G.R. No. 157903.[31]

---

[27] *Land Bank of the Phils. v. Suntay*, *supra* note 1 at 893.

[28] *Rollo*, Vol. II, pp. 827-830.

[29] *Rollo*, Vol. I, pp. 537-538.

[30] *Id.* at 537.

[31] *Land Bank of the Phils. v. Suntay*, *supra* note 1 at 895.

In its Decision[32] dated October 11, 2007 in G.R. No. 157903, the Court reversed and set aside the CA ruling and ordered the RTC to conduct further proceedings to determine the proper just compensation for Suntay's expropriated property. It ruled that Land Bank properly filed its Petition for determination of just compensation before the RTC in accordance with Section 57 of RA 6657. It emphasized that the RTCs, sitting as Special Agrarian Courts, had original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners.

On March 19, 2008, the Court's Decision dated October 11, 2007 became final and executory and was recorded in the Book of Entries of Judgments.[33]

Order to Resume Interrupted Execution of Alias Writ

Notwithstanding the finality of the Court's Decision in G.R. No. 157903, Suntay filed an Urgent *Ex-Parte* Manifestation and Motion to Resume Interrupted Execution[34] of the Decision dated January 24, 2001 in DARAB Case No. V-0405-0001-00. Suntay argued that said Decision had already become final and executory pursuant to the case of *Land Bank of the Phils. v. Martinez*[35] (*Martinez*) wherein the Court reiterated its earlier ruling in *Dept. of Agrarian Reform Adjudication Board v. Lubrica*[36] (*Lubrica*) that a petition for the fixing of just compensation with the Special Agrarian Courts must be filed

---

[32] *Land Bank of the Phils. v. Suntay*, 561 Phil. 711 (2007); penned by Associate Justice Angelina Sandoval-Gutierrez with Chief Justice Reynato S. Puno and Associate Justices Renato C. Corona, Adolfo S. Azcuna and Cancio C. Garcia, concurring.

[33] See Entry of Judgment dated March 19, 2008 and signed by Deputy Clerk of Court Ma. Lourdes C. Perfecto, Second Division, *rollo*, Vol. I, p. 261.

[34] *Rollo*, Vol. II, pp. 774-777.

[35] 582 Phil. 739 (2008).

[36] *Dept. of Agrarian Reform, Adjudication Board v. Lubrica, supra* note 16.

within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality.

On October 30, 2008, Atty. Miñas granted Suntay's motion and ordered the DARAB sheriffs to resume their implementation of the Alias Writ of Execution dated September 14, 2005,[37] *viz*.:

> The basis of the motion, the case of Land Bank vs. Raymunda Martinez (supra) indubitably clarified that "the adjudicator's decision on land valuation attained finality after the lapse of the 15-day period citing the case of Department of Agrarian Reform Adjudication Board vs. Lubrica in G.R. No. 159145 promulgated on April 29, 2005. x x x
>
> The ruling in the case of Land Bank of the Philippines vs. Raymunda Martinez which upheld the Decision in Lubrica having attained finality the Status Quo Order issued by the Third Division in G.R. No. 157903 is now rendered ineffective.
>
> WHEREFORE, premises considered, the instant motion is hereby GRANTED.
>
> x x x x[38]

This prompted Land Bank to file a special civil action for *certiorari* with the CA (docketed as CA-G.R. SP No. 106104), claiming that Atty. Miñas gravely abused her discretion when she rendered *ex-parte*, and without notice to the adverse party, the Order dated October 30, 2008 which effectively modified or altered the Court's final and executory Decision in G.R. No. 157903.[39]

In the meantime, the DAR formally charged Atty. Miñas with grave abuse of authority, ignorance of the law, conduct unbecoming of an adjudicator in a quasi-judicial body of the DAR (the DARAB), and conduct prejudicial to the best interest of the public for issuing the Order dated October 30, 2008.[40]

---

[37] See Order dated October 30, 2008, *rollo*, Vol. I, pp. 283-285.

[38] *Id.* at 284.

[39] *Land Bank of the Phils. v. Suntay*, *supra* note 1 at 897-898.

[40] See Formal Charge signed by Department of Agrarian Reform (DAR) Secretary Nasser C. Pangandaman, *rollo*, Vol. I, pp. 326-327.

Accordingly, the DAR preventively suspended Atty. Miñas and replaced her with RARAD Marivic C. Casabar (RARAD Casabar) of Region I.[41]

On December 15, 2008, RARAD Casabar immediately recalled the Order[42] dated October 30, 2008, *viz*.:

> Considering the *patently and indubitable illegality of the Order, subject hereof virtually a defiance of express orders of the Supreme Court* in the said case and, in compliance and strict observance with the said mandatory and extant directives of the Supreme Court, it is hereby RESOLVED and DIRECTED that the said Order of October 30, 2008 in DARAB CASE No. V-0405-0001-00 should be, as hereby it is, RECALLED and WITHDRAWN and any action taken pursuant thereto or by authority thereof are DEEMED NULLIFIED and CANCELLED, having been done in violation of the declared *status quo* prior to the issuance of the Alias Writ of Execution (Resolution of October 24, 2005, G.R. No. 157903), not to make mention of the issued and existing restraining order. All thereof are DEEMED QUASHED and of no force and effect.[43] (Italics in the original and supplied.)

Nevertheless, the DAR later on issued a Resolution[44] dated June 15, 2010 dismissing the formal charges against Atty. Miñas.

In view of the RARAD Order dated December 15, 2008, the CA dismissed Land Bank's petition for *certiorari* in CA-G.R. SP No. 106104 on the ground of mootness.[45] Dismayed, Land

---

[41] See DAR Special Order No. 856, Series of 2008 dated December 12, 2008, *id.* at 297.

[42] *Id.* at 298-302.

[43] *Id.* at 300.

[44] *Id.* at 328-333; signed by DAR Secretary Nasser C. Pangandaman.

[45] See Resolution dated June 5, 2009 of the CA in CA-G.R. SP No. 106104, *id.* at 310-325; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rosmari D. Carandang (now a member of the Court) and Marlene Gonzales-Sison, concurring.

Bank elevated the case to the Court through a petition for review on *certiorari*. The case was docketed as **G.R. No. 188376**.

The Court's Ruling in G.R. No. 188376

In its Decision[46] dated December 14, 2011, the Court noted that Land Bank's appeal was the third time that its intervention was invoked regarding the controversy, the earlier cases being *Lubrica* docketed as G.R. No. 159145 and *Land Bank of the Phils. v. Suntay*[47] (*Suntay*) docketed as G.R. No. 157903. Given the seemingly conflicting pronouncements in *Lubrica* and *Suntay*, the Court resolved to reverse the assailed CA ruling and settle with finality the legality of the Order dated October 30, 2008 rendered by Atty. Miñas in DARAB Case No. V-0405-0001-00.[48]

The Court unequivocally declared the *Suntay* ruling as the law of the case for all subsequent proceedings in the RTC as a Special Agrarian Court in Agrarian Case No. R-1241. It stressed that the Decision dated October 11, 2007 in G.R. No. 157903, having already attained finality, can no longer be altered, modified, or reversed, not even by the Court sitting *En Banc*. Thus, the Court's ruling in *Martinez* cannot be invoked in order to bar the conclusive effects of the judicial result reached in *Suntay*. The Court further pointed out that the *Martinez* ruling was neither applicable nor binding on the parties as it concerned a different set of facts, parties, and subject matter.[49]

For these reasons, the Court quashed and nullified the Alias Writ of Execution dated September 14, 2005 and the Order dated October 30, 2008 (directing the DARAB sheriffs to resume the interrupted implementation of said writ of execution) issued by Atty. Miñas and all acts performed pursuant thereto. It explained that the Order dated October 30, 2008 was invalid for two reasons: *first*, the Court had previously quashed all

---

[46] *Land Bank of the Phils. v. Suntay, supra* note 1.

[47] *Land Bank of the Phils. v. Suntay, supra* note 32.

[48] *Land Bank of the Phils. v. Suntay, supra* note 1 at 928.

[49] *Id.* at 910-911.

acts done in compliance with the Alias Writ of Execution when it directed the parties to maintain the *status quo ante* in its Resolution dated October 24, 2005; and *second*, Atty. Miñas herself quashed all acts done pursuant to the Alias Writ of Execution on October 25, 2005. In other words, the Order dated October 30, 2008 was void and ineffectual for lack of both factual and legal basis—there were no longer any existing valid prior acts or proceedings to resume enforcement of.[50]

As a result, the Court granted Land Bank's petition for review on *certiorari* and directed the RTC to continue the proceedings for the determination of the just compensation for Suntay's expropriated property in Agrarian Case No. R-1241. It also ordered the IBP to investigate the actuations of Atty. Miñas to determine any possible administrative liabilities on her part, to wit:[51]

> WHEREFORE, we GRANT the petition for review on *certiorari*, and REVERSE the Decision promulgated June 5, 2009 in CA-G.R. SP No. 106104.
>
> *ACCORDINGLY*, the Court:
>
> x x x x
>
> (e) *COMMANDS* the Integrated Bar of the Philippines to investigate the actuations of Atty. Conchita C. Miñas in DARAB Case No. V-0405-0001-00, and to determine if she was administratively liable as a member of the Philippine Bar;
>
> x x x x[52]

Respondent's Comment

In her defense,[53] Atty. Miñas argued that she did not act beyond the scope of her authority as regional adjudicator when she

---

[50] *Id.* at 916.

[51] *Id.*

[52] *Id.* at 928-929.

[53] See Position Paper for Respondent dated May 5, 2014, *rollo*, Vol. I, pp. 355-386.

issued the Order dated October 30, 2008 as she merely implemented the Court's final and executory ruling in *Lubrica*, as affirmed in *Martinez*.

Atty. Miñas further explained that she sought clarification from Chief Justice Reynato Puno as to the applicability and implementation of the Court's conflicting' rulings in *Suntay* and *Lubrica* but she received no reply. Thus, in issuing the Order dated October 30, 2008, she relied heavily on the *Martinez* ruling wherein the Court declared *Lubrica* as the better rule over *Suntay*.[54]

Finally, Atty. Miñas insisted that she did not issue the subject Order with bad faith, dishonesty or corruption, and if she committed an error in applying the *Lubrica* ruling, the proper remedy would be a judicial recourse with the appellate courts and not the instant disciplinary proceeding.[55]

Report and Recommendation of the IBP

In the Report and Recommendation[56] dated May 3, 2017, IBP Investigating Commissioner Joel L. Bodegon (Investigating Commissioner) found that Atty. Miñas had violated Rule 1.01, Canon 1 and Rule 10.03, Canon 10 of the Code of Professional Responsibility (CPR), and recommended that she be suspended from the practice of law for a period of two years.

The Investigating Commissioner observed that the way Atty. Miñas handled the proceedings in DARAB Case No. V-0405-0001-00 resulted in multiple cases reaching not only the CA but also the Supreme Court. He noted that in these cases, Atty. Miñas demonstrated a singular intent to have her Decision in the DARAB case implemented to the damage of not only Land Bank but also the other parties that had to contend with its execution. In addition, the Investigating Commissioner pointed out that Atty. Miñas appeared "just too willing to risk breaching

---

[54] *Id.* at 378-379.

[55] *Id.* at 381-382.

[56] *Rollo*, Vol. II, pp. 966-990.

the limits of her discretion as adjudicator, thereby betraying her unusual interest in securing the immediate execution of her [D]ecision of 24 January 2001."[57]

In its Resolution No. XXIII-2017-026[58] dated August 31, 2017, the IBP Board of Governors adopted the findings of fact and recommendation of the Investigating Commissioner to impose against Atty. Miñas the penalty of suspension from the practice of law for a period of two years.

The Issue

Whether Atty. Miñas should be held administratively liable for her issuances as RARAD of Region IV-DARAB in DARAB Case No. V-0405-0001-00.

The Court's Ruling

The factual findings and recommendation of the IBP Board of Governors are well-taken.

Respondent's actuations constitute gross misconduct.

"A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor."[59] Misconduct is defined as "an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official."[60] It is considered a grave offense in cases where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present.[61]

---

[57] *Id.* at 985.

[58] *Id.* at 964-965.

[59] *Lahm III, et al. v. Labor Arbiter Mayor, Jr.*, 682 Phil. 1, 8 (2012), citing *Spouses Donato v. Atty. Asuncion*, 468 Phil. 329, 335 (2004), further citing *Re Administrative Case Against Atty. Occeña*, 433 Phil. 138, 154 (2002).

[60] *Anonymous Complaint v. Judge Dagala*, 814 Phil. 103, 118 (2017).

[61] *Id.*, citing *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).

In this case, there is no question that Atty. Miñas had knowingly violated the law and disregarded established rules when she issued the Order dated October 30, 2008 in order to resume the implementation of the Alias Writ of Execution dated September 14, 2005.

For one thing, Atty. Miñas herself had ordered all actions done in compliance with the Alias Writ of Execution to be quashed and rendered with no force and effect, in view of the Court's *status quo ante* order in the Resolution dated October 24, 2005.

For another, it is undisputed that Atty. Miñas issued the Order dated October 30, 2008 *after* the Court's Decision dated October 11, 2007 in G.R. No. 157903 attained finality. To recall, the Court in *Suntay* directed the RTC to conduct further proceedings to determine the proper just compensation of the expropriated property. Thus, when Atty. Miñas ordered the DARAB sheriffs to resume implementation of the Alias Writ of Execution, she disregarded not only the Court's final and executory ruling in *Suntay*, but also, she ended up substituting her own judgment (per her Decision dated January 24, 2001 in DARAB Case No. V-0405-0001-00) as to the amount of just compensation that should be paid by Land Bank for the expropriated property.

Under these circumstances, the Court simply cannot accept the defense of good faith of Atty. Miñas as she was well aware of the finality of the *Suntay* ruling when she issued the Order dated October 30, 2008. She had known that in issuing said Order, she effectively contradicted the Court's directive in *Suntay* for the RTC to determine the proper just compensation of the expropriated property. Even assuming *arguendo* that the *Suntay* ruling was erroneous, Atty. Miñas is expected to know that a final and executory judgment can no longer be modified in any respect by the court which rendered it or even by the Supreme Court.[62]

---

[62] See *PCI Leasing and Finance, Inc. v. Milan, et al.*, 631 Phil. 257 (2010).

To be clear, good faith denotes "honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry" or the lack of all information, notice, benefit or belief of facts which would render one's actions unconscientious.[63] Here, Atty. Miñas' knowledge of the finality of the *Suntay* ruling is enough to belie her defense of good faith.

Worse, as the IBP Board of Governors aptly observed, it appears that Atty. Miñas had indeed exhibited an unusual interest in securing the immediate execution of the Decision[64] dated January 24, 2001 wherein she awarded Suntay the gargantuan amount of ₱157,541,951.30, or ₱166,150.00 per hectare, which is ₱153,290,809.62 more than the original valuation fixed by the DAR for the expropriated property. In addition, the records also show that:

First, despite the pendency of Agrarian Case No: R-1241 in the RTC for judicial determination of just compensation, Atty. Miñas declared the Decision dated January 24, 2001, a judgment she herself rendered, as final and executory notwithstanding Land Bank's opposition thereto, and thereafter immediately issued the Writ of Execution dated July 18, 2001 to enforce it.

Second, Atty. Miñas issued the Alias Writ of Execution dated September 14, 2005 to enforce the Decision dated January 24, 2001 while Lank Bank's appeal in G.R. No. 157903 was pending resolution before this Court. Interestingly, what is at issue in G.R. No. 157903 is whether the RTC correctly dismissed Land Bank's Petition for the determination of just compensation. Surely, Atty. Miñas should have known that the outcome of G.R. No. 157903 would inevitably affect the judgment she rendered in DARAB Case No. V-0405-0001-00.

And *third*, as mentioned above, Atty. Miñas issued the Order dated October 30, 2008 to implement the Alias Writ of Execution

---

[63] *Development Bank of the Phils. v. Commission on Audit*, 827 Phil. 818, 827 (2018), citing *PEZA v. COA*, 690 Phil. 104, 115 (2012).

[64] *Rollo*, Vol. I, pp. 174-186.

despite the clear directive of the Court in G.R. No. 157903 for the RTC to conduct further proceedings to determine the proper just compensation of the expropriated property. Significantly, the Court, in its Decision dated December 14, 2011 in G.R. No. 188376, later *nullified* the Order dated October 30, 2008 for lack of factual and legal bases.

On this point, the case of *Prudential Bank v. Judge Castro*[65] (*Judge Castro*) is instructive. In *Judge Castro*, the Court dismissed the respondent judge from the service for declaring his own summary judgment final, ordering the issuance of a writ of execution awarding astronomical sums, and foreclosing the right to appeal through clever maneuvers, which clearly indicated the judge's partiality for one of the parties to the detriment of the objective dispensation of justice.

Here, Atty. Miñas, as a regional adjudicator, was tasked with the duty of deciding conflicting claims of the parties as a part of the quasi-judicial system of our government. As such, by analogy, the instant case may be likened to administrative cases against judges.[66]

Section 1, Canon 4 of the New Code of Judicial Conduct states:

CANON 4. PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Section 1. Judges shall avoid impropriety and *the appearance of impropriety* in all of their activities. (Italics supplied.)

As a keeper of the public faith, Atty. Miñas is burdened with a high degree of social responsibility.[67] Indubitably, her conduct in this case fell short of the integrity and good moral character

---

[65] *See Prudential Bank v. Judge Castro*, 226 Phil. 153 (1986) and 239 Phil. 508 (1987).

[66] *Tadlip v. Atty. Borres, Jr.*, 511 Phil. 56, 64 (2005).

[67] *Atty. Vitriolo v. Atty. Dasig*, 448 Phil. 199, 209 (2003).

required from all lawyers, especially from one occupying a public office.[68]

Respondent is guilty of gross ignorance of the law.

In *Suntay*, the Court reiterated the procedure for the determination of just compensation cases under RA 6657 as follows:

> The procedure for the determination of just compensation cases under R.A. No. 6657, as summarized in *Landbank of the Philippines v. Banal*, is that **initially**, the Land Bank is charged with the responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking under the voluntary offer no sell or compulsory acquisition arrangement. The DAR, relying on the Land Bank's determination of the land valuation and compensation, then makes an offer through a notice sent to the landowner. If the landowner accepts the offer, the Land Bank shall pay him the purchase price of the land after he executes and delivers a deed of transfer and surrenders the certificate of title in favor of the government. *In case the landowner rejects the offer or fails to reply thereto, the DAR adjudicator conducts summary administrative proceedings to determine the compensation for the land by requiring the landowner, the Land Bank and other interested parties to submit evidence as to the just compensation for the land. A party who disagrees with the Decision of the DAR adjudicator may bring the matter to the RTC designated as a Special Agrarian Court for the determination of just compensation.* In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. No. 6657.[69] (Emphasis in the original; italics supplied.)

Atty. Miñas, as a regional adjudicator and a member of the Bar, is expected to be well-versed on legal procedures, most specially those which affect her official functions in the RARAD. This expectation is imposed upon all members of the legal profession because membership in the Bar is in the category of a mandate for public service of the highest order.[70] It is quite

---

[68] *Id.*

[69] *Land Bank of the Phils. v. Suntay, supra* note 32 at 722-723.

[70] *Office of the Court Administrator v. Atty. Liangco*, 678 Phil. 305, 320 (2011).

hard to believe that Atty. Miñas is unaware of these procedural rules; considering that she is a recipient of the Most Outstanding RARAD award for several years.[71]

In this case, Atty. Miñas perilously stretched the DARAB Rules by declaring her Decision dated January 24, 2001 final and executory despite the pendency of Agrarian Case No. R-1241 and in complete disregard of Section 57 of RA 6657 which vests original and exclusive jurisdiction over all petitions for the determination of just compensation to Special Agrarian Courts. Verily, where her own decision was assailed either on appeal or by original court action, proper judicial temperament as adjudicator dictates upon Atty. Miñas to be more circumspect and judicious and *not* preempt the court on the latter's action on the petition filed with it.[72]

While it is true that a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice,[73] it is equally true that when the law violated by the judge is elementary, the failure to know or observe it constitutes gross ignorance of the law which makes a judge subject to disciplinary action.[74]

For these reasons, the Court finds the actuations of Atty. Miñas tantamount to punishable professional incompetence and gross ignorance of the law. Simply put, Atty. Miñas should have known better than to deliberately exceed the bounds of her authority as regional adjudicator through her various issuances that were purposely aimed at the immediate enforcement of her Decision dated January 24, 2001 in DARAB Case No. V-0405-0001-00.

Atty. Miñas disregarded a final and immutable Decision of the Highest Court of the land.

---

[71] *Rollo*, Vol. I, p. 376.

[72] *Rollo*, Vol. II, pp. 984-985.

[73] See *Tadlip v. Atty. Borres, Jr., supra* note 66.

[74] *Id.* at 65. Citations omitted.

It need not be stated that when a judgment is final and executory, it becomes immutable and unalterable.[75] In fact, jurisprudence elucidates that not even the Supreme Court can annul or modify an already final decision.[76] Reasons of public policy, judicial orderliness, economy, judicial time and the interests of litigants, as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction.[77] Undoubtedly, such reasons apply with greater force on final judgments of the highest Court of the land.[78]

In this case, it is undisputed that the Court's Decision dated October 11, 2007, G.R. No. 157903 became final and executory on March 19, 2008. Thus, when Atty. Miñas issued the Order dated October 30, 2008 to enforce her Decision dated January 24, 2001 in DARAB Case No. V-0405-0001-00, she effectively *varied, altered, changed*, or otherwise *disregarded* the Court's ruling in G.R. No. 157903 which left the determination of the just compensation of Suntay's expropriated property to the RTC.

This the Court cannot countenance. All lawyers are expected to recognize the authority of the Supreme Court and to obey its lawful processes and orders, and if Atty. Miñas has not taken this to heart, then she is unfit to engage in the practice of law.[79]

As to the proper penalty.

It is settled that "a lawyer who holds a government office may be disciplined as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer."[80]

---

[75] *Vargas, et al. v. Cajucom*, 761 Phil. 43, 54 (2015), citing *Abrigo, et al. v. Flores, et al.*, 711 Phil. 251, 253 (2013).

[76] *Nuñal v. Court of Appeals*, 293 Phil. 28, 35 (1993).

[77] *Lee Bun Ting v. Judge Aligaen*, 167 Phil. 164, 178 (1977).

[78] *Id.*

[79] *Marcelo v. CA*, 312 Phil. 418, 419 (1995).

[80] *Abella v. Barrios, Jr.*, 711 Phil. 363, 370 (2013), citing *Olazo v. Justice Tinga (Ret.)*, 651 Phil. 290, 298 (2010).

Here, the Court finds the actuations of Atty. Miñas to be in clear violation of Rule 1.01 and Canon 1 of the CPR which state:

> CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Further, the Lawyer's Oath imposes upon all members of the Bar the duty "[to] support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein x x x."

The Court also considers Atty. Miñas' issuance of the Order dated October 30, 2008 tantamount to willful disobedience of the Decision dated October 11, 2007 in G.R. No. 157903.

Under Section 27, Rule 138 of the Rules of Court, an erring lawyer may either be disbarred or suspended based on the following grounds, *viz*.:

> SEC. 27. *Disbarment or suspension of attorneys removed or by Supreme Court; grounds therefor*. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other *gross misconduct* in such office, grossly immoral conduct — or by reason of his conviction of a crime involving moral turpitude, or for *any violation of the oath* which he is required to take before the admission to practice, or for a *willful disobedience of any lawful order of a superior court*, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Italics in the original and supplied.)

In this case, the Court may unquestionably impose against Atty. Miñas the penalty of disbarment from the practice of law for her actions which constitute gross misconduct and gross ignorance of the law in breach of the CPR and the Lawyer's Oath, as well as willful disobedience of a lawful order of the Supreme Court. Nevertheless, considering that this is the first offense for Atty. Miñas, the Court deems the penalty of

suspension from the practice of law for a period of two years as sufficient sanction against her to protect the public and the legal profession.[81]

Time and again, the Court has stressed that the supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. While the Court will not hesitate to remove an erring lawyer where the evidence calls for it, it will also not disbar him where a lesser penalty will suffice to accomplish the desired end.[82]

WHEREFORE, the Court finds respondent Atty. Conchita C. Miñas **GUILTY** of gross misconduct and gross ignorance of the law in violation of Rule 1.01 and Canon 1 of the Code of Professional Responsibility and the Lawyer's Oath, and willful disobedience of a lawful order of the Supreme Court.

Accordingly, respondent Atty. Conchita C. Miñas is hereby **SUSPENDED** from the practice of law for a period of two (2) years effective upon service on respondent Atty. Conchita C. Miñas of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to the personal record of respondent Atty. Conchita C. Miñas, the Integrated Bar of the Philippines and the Department of Agrarian Reform for their information and guidance.

SO ORDERED.

Peralta, C. J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Carandang and *Lazaro-Javier, JJ.*, on official leave.

---

[81] See *Re: Report on the Preliminary Results of the Spot Audit in the RTC, Br. 170, Malabon City*, 817 Phil. 724 (2017).

[82] See *Hipolito v. Atty. Alejandro-Abbas*, A.C. No. 12485, December 10, 2019.

EN BANC

[A.M. No. P-18-3850. November 17, 2020]

OFFICE OF THE COURT ADMINISTRATOR, *Complainant, v.* **Court Stenographer III Mary Ann R. Buzon, Regional Trial Court, Branch 72, Malabon City [formerly A.M. No. 18-04-78-RTC (In Re: Letter of Executive Judge Edmund G. Batara, Regional Trial Court, Malabon City, forwarding pertinent documents relative to the arrest of Court Stenographer III Mary Ann R. Buzon, Regional Trial Court, Branch 72, Malabon City)],** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROHIBITION AGAINST ALL FORMS OF SOLICITATION OF GIFT OR OTHER PECUNIARY OR MATERIAL BENEFITS, OR RECEIPT OF CONTRIBUTIONS.— Time and again, this Court has stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility." Court personnel, regardless of position or rank, are expected to conduct themselves in accordance with the strict standards of integrity and morality. Indeed, the "special nature of [the court personnel's] duties and responsibilities" is manifest in the adoption of a separate code of conduct especially for them, the Code of Conduct For Court Personnel. One of the prohibitions in the said Code is directed against all forms of solicitation of gift or other pecuniary or material benefits or receipts of contributions for himself/herself from any person, whether or not a litigant or lawyer. The intention behind the prohibition is to avoid any suspicion that the major purpose of the donor is to influence the court personnel in performing official duties. In this case, this Court agrees that there is substantial evidence to hold respondent liable for violating the aforesaid rule.

2. ID.; ID.; ID.; ID.; THE ACT OF RECEIVING MONEY FROM LITIGANTS DEGRADES THE JUDICIARY AND DIMINISHES THE RESPECT AND REGARD OF THE PEOPLE FOR THE COURT AND ITS PERSONNEL.— Instead of performing her duties, respondent [court stenographer] was caught in the act of receiving the amount of Php50,000.00 from Tablante. Undoubtedly, her conduct has degraded the Judiciary and diminished the respect and regard of the people for the court and its personnel. In a similar vein, respondent's bare denial does not deserve any credence. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.

Tablante's own admission as to the purpose of the money does not diminish the impropriety of respondent's conduct outside of court during office hours, and her subsequent receipt of the money. This Court has repeatedly ruled that court employees have no business meeting with litigants or their representatives under any circumstance, and that such conduct constitutes betrayal of public trust.

Further, the mere act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee. Respondent's act of collecting or receiving money, no matter how nominal the amount involved, erodes the respect for law and the courts.

3. ID.; ID.; ID.; PROHIBITION FROM RECOMMENDING PRIVATE ATTORNEYS TO ANYONE DEALING WITH THE JUDICIARY; ASSISTING A PARTY IN FINDING LEGAL REPRESENTATION IS A VIOLATION OF THE ETHICAL RULES.— Canon IV, Section 5 of the Code of Conduct for Court Personnel prohibits court personnel from recommending private attorneys to litigants, prospective litigants, or anyone dealing with the judiciary. While court employees are not totally prohibited from rendering aid to others, they should see to it that the assistance, albeit involving acts unrelated to their official functions, does not in any way compromise the public's trust in the justice system. Clearly, by assisting Tablante in finding legal representation, respondent violated ethical rules.

Respondent's action is all the more malevolent considering that Tablante has a pending case with the court where she is a

stenographer. Their interaction gave the appearance that the court is partial to Tablante's cause. As an employee of the judiciary, respondent should have maintained a neutral attitude in dealing with party-litigants. If it were true that Tablante insisted on asking for her assistance, respondent should have severed any form of communication with her. However, instead of distancing herself, respondent even agreed to meet Tablante after the latter represented that she already gathered funds to pay for a lawyer. Certainly, respondent's deliberate acts are inconsistent with her claim that she was merely a victim of frame-up.

4. ID.; ID.; ID.; GRAVE MISCONDUCT; SOLICITATION OR RECEIPT OF MONEY FROM PARTY-LITIGANTS CONSTITUTES GRAVE MISCONDUCT, WHICH IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE.— In various cases, this Court deemed the demand and receipt of money from party-litigants constitutive of serious misconduct. The instant case should not be treated differently. Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules. Respondent's solicitation of money from Tablante in exchange for the acquittal of her brother violates Canon I of the Code of Conduct for Court Personnel, . . .

Grave misconduct is classified as a grave offense punishable by dismissal from service for the first offense. Corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

5. ID.; ID.; ID.; DISHONESTY; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; DEMANDING AND RECEIVING MONEY FROM A PARTY

CONSTITUTE A CRIME AND AN ACT OF SERIOUS IMPROPRIETY.— In addition, this Court agrees that respondent's acts amount to dishonesty and conduct prejudicial to the best interest of the service. Dishonesty is defined as a "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Meanwhile, in *Office of the Court Administrator v. Necessario*, this Court ruled that acts of court personnel outside their official functions may constitute conduct prejudicial to the best interest of the service because these acts violate what is prescribed for court personnel.

By soliciting money from Tablante, respondent committed an act of impropriety which immeasurably affects the honor of the judiciary and the people's confidence in it. She committed the ultimate betrayal of her duty to uphold the dignity and authority of the judiciary by peddling influence to litigants, creating the impression that decisions can be bought and sold.

The public's continuous trust in the judiciary is essential to its existence. In order to gain the litigants' confidence, all employees of the Court, from judges to the lowest clerk must ensure that their conduct exemplifies competence, honesty and integrity. Similarly, if the Court is to enjoy the public's continued patronage, any transgression of ethical rules should not be lightly taken, nor condoned. In this case, respondent unfortunately fell extremely short of the standards that should have governed her life as a public servant. By demanding and receiving money from Tablante, she committed a crime and an act of serious impropriety that eroded respect for the law and the judicial institutions.

D E C I S I O N

***PER CURIAM*:**

The instant administrative case stemmed from a Letter[1] (Letter) dated 12 March 2018 by Presiding Judge Jimmy Edmund G. Batara (Judge Batara) of the Regional Trial Court (RTC) of

[1] *Rollo*, p. 5.

Malabon City to the Office of Assistant Court Administrator Lilia C. Barribal-Co relative to the arrest of Mary Ann R. Buzon (respondent), Court Stenographer III of Branch 72, RTC of Malabon City. Attached to the Letter are the documents[2] pertaining to the arrest of respondent in an entrapment operation conducted on 09 March 2018.

Antecedents

Judge Batara narrated that on 09 March 2018, Elsa B. Tablante (Tablante) went to the Malabon City Police Station for advice on respondent's demand for Php50,000.00. Respondent allegedly represented that the money were to be given to Judge Batara in exchange of a favorable decision in the criminal cases, where Tablante's brother was an accused.[3]

The Women's Protection Desk of the police station then prepared for an operation to entrap respondent. At around 1:30 that afternoon, Tablante met respondent in a canteen in front of the RTC. She handed the envelope containing the marked money to respondent, who immediately took it. The police officers then came out and arrested her. Respondent was taken to the *Ospital ng Malabon* for physical examination, and later, turned over to the Station Investigation and Detection Management Branch for investigation.[4]

The subsequent inquest resulted to an Inquest Resolution[5] dated 09 March 2018 recommending the conduct of a regular preliminary investigation to determine whether there is probable cause to charge respondent with robbery (extortion). In a Resolution[6] dated 12 April 2018, the Office of the City Prosecutor

---

[2] *Id.* at 5-10. Attached to the Letter are the following: 1) Police Referral Letter dated 09 March 2018; 2) Joint Affidavit of Arrest; 3) Elsa Tablante's Affidavit; 3) photocopy of a marked money; and 4) Medico Legal/Verification Form.

[3] *Id.* at 6.

[4] *Id.*

[5] *Id.* at 31-34.

[6] *Id.* at 39-44.

(OCP), Malabon City dismissed the charge for robbery (extortion), but recommended that an Information be filed against respondent for the crime of direct bribery.

Respondent was accordingly charged with direct bribery. The case was docketed as Criminal Case No. 19-072-MAL and currently pending before Branch 293, RTC of Malabon City.[7]

Proceedings before this Court

In a Resolution[8] dated 20 June 2018, this Court resolved to treat Judge Batara's letter as a formal administrative complaint, and ordered respondent to comment. This Court also placed her under preventive suspension.

For her part, respondent submitted her Comment,[9] attaching thereto the *Kontra-Salaysay*[10] and Rejoinder-Affidavit[11] she presented during the preliminary investigation. She denied Tablante's allegations[12] and emphasized that the charge for robbery (extortion) was dismissed. She explained that she was merely helping Tablante find a lawyer for her brother's case.[13] Respondent maintained that complainant forced the money upon her when they met on 09 March 2018.[14] To corroborate her claim, she attached the affidavit[15] of one Giovanni Narciso. She also insisted that Judge Batara was behind the entrapment operation and he solicited Tablante's help in exchange for her brother's acquittal.[16]

---

[7] *Id.* at 78-79.

[8] *Id.* at 12-13.

[9] *Id.* at 14-21.

[10] *Id.* at 22-28.

[11] *Id.* at 29-30.

[12] *Id.* at 22.

[13] *Id.* at 23.

[14] *Id.* at 24.

[15] *Id.* at 53.

[16] *Id.* at 25.

In her Rejoinder-Affidavit, respondent further claimed that there is no proof that she demanded money from Tablante.[17] She also contended that there is no evidence that she received the Php50,000.00 since the entrapment money was not dusted with fluorescent powder, and no video footage was presented showing the same.[18]

Report and Recommendation of the OCA

The OCA submitted its Report and Recommendation[19] dated 16 July 2019, recommending that respondent be held liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of service, and be dismissed from service with forfeiture of her retirement and other benefits.

It noted that respondent did not deny she was with Tablante in the afternoon of 09 March 2018,[20] and acted inappropriately as the meeting was done outside of the office during office hours. Likewise, it did not find meritorious respondent's explanation that she was merely helping Tablante find a lawyer as it undermines people's trust in the judiciary.[21]

The OCA found that contrary to respondent's claim, there was proof she received the money from Tablante. Indeed, the OCP's Resolutions and affidavits of the arresting officers uniformly stated that respondent demanded and received Php50,000.00 from Tablante.[22]

Respondent's attempt to discredit Tablante and Judge Batara was also brushed aside by the OCA. Respondent failed to substantiate her allegation that Judge Batara set her up to be arrested.[23] Likewise, the OCA held that respondent failed to

---

[17] *Id.* at 29.

[18] *Id.*

[19] *Id.* at 249-261.

[20] *Id.* at 256.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 258.

prove ill motives on the part of the police officers and the OCP for their adverse statements against her.

Issue

For this Court's resolution is whether or not respondent is guilty of grave misconduct, dishonesty and conduct prejudicial to the best interest of the service.

Ruling of the Court

This Court fully agrees with the OCA's recommendation.

Time and again, this Court has stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility."[24] Court personnel, regardless of position or rank, are expected to conduct themselves in accordance with the strict standards of integrity and morality. Indeed, the "special nature of [the court personnel's] duties and responsibilities" is manifest in the adoption of a separate code of conduct especially for them, the Code of Conduct for Court Personnel.[25] One of the prohibitions in the said Code is directed against all forms of solicitation of gift or other pecuniary or material benefits or receipts of contributions for himself/herself from any person, whether or not a litigant or lawyer.[26] The intention behind the prohibition is to avoid any suspicion that the major purpose of the donor is to influence the court

---

[24] *Office of the Court Administrator v. Adalim-White*, A.M. No. RTJ-15-2440, 04 September 2018.

[25] *Villahermosa, Sr. v. Sarcia*, 726 Phil. 408 (2014); A.M. No. CA-14-28-P, 11 February 2014; 715 SCRA 639, 646.

[26] **CANON I**
FIDELITY TO DUTY
x x x
SECTION 2.
Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions.
x x x

personnel in performing official duties.[27] In this case, this Court agrees that there is substantial evidence to hold respondent liable for violating the aforesaid rule.

Respondent is a court stenographer, whose duty is to make an accurate and faithful record of the court proceedings, as well as its honest and authentic reproduction in the transcript.[28] She had no business or authority to meet with litigants nor demand and receive money from them.

Instead of performing her duties, respondent was caught in the act of receiving the amount of Php50,000.00 from Tablante. Undoubtedly, her conduct has degraded the Judiciary and diminished the respect and regard of the people for the court and its personnel.[29] In a similar vein, respondent's bare denial does not deserve any credence. Denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[30]

Tablante's own admission as to the purpose of the money does not diminish the impropriety of respondent's conduct outside of court during office hours, and her subsequent receipt of the money. This Court has repeatedly ruled that court employees have no business meeting with litigants or their representatives under any circumstance, and that such conduct constitutes betrayal of public trust.[31]

Further, the mere act of receiving money from litigants, whatever the reason may be, is antithesis to being a court

---

[27] *Cabauatan v. Uvero*, A.M. No. P-15-3329, 06 November 2017; 844 SCRA 7.

[28] *Seangio v. Parce*, 553 Phil. 697 (2007); A.M. No. P-06-2252, 09 July 2007.

[29] *Alano v. Sahi*, 745 Phil. 385 (2014); A.M. No. P-14-3252, 14 October 2014; 738 SCRA 261.

[30] *Id.*

[31] *Sy v. Dinopol*, 654 Phil. 650 (2011); A.M. No. RTJ-09-2189, 18 January 2011; 639 SCRA 681.

employee. Respondent's act of collecting or receiving money, no matter how nominal the amount involved, erodes the respect for law and the courts.[32]

Likewise, respondent claims that she was merely assisting Tablante in finding a new defense lawyer does not legitimize her actions. Canon IV, Section 5 of the Code of Conduct for Court Personnel prohibits court personnel from recommending private attorneys to litigants, prospective litigants, or anyone dealing with the judiciary. While court employees are not totally prohibited from rendering aid to others, they should see to it that the assistance, albeit involving acts unrelated to their official functions, does not in any way compromise the public's trust in the justice system.[33] Clearly, by assisting Tablante in finding legal representation, respondent violated ethical rules.

Respondent's action is all the more malevolent considering that Tablante has a pending case with the court where she is a stenographer. Their interaction gave the appearance that the court is partial to Tablante's cause. As an employee of the judiciary, respondent should have maintained a neutral attitude in dealing with party-litigants. If it were true that Tablante insisted on asking for her assistance, respondent should have severed any form of communication with her. However, instead of distancing herself, respondent even agreed to meet Tablante after the latter represented that she already gathered funds to pay for a lawyer. Certainly, respondent's deliberate acts are inconsistent with her claim that she was merely a victim of frame-up.

Thus, respondent should be held accountable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of service.

---

[32] *Perez v. Roxas*, A.M. No. P-16-3595, 26 June 2018; 868 SCRA 186.

[33] *Office of the Court Administrator v. Chavez*, 806 Phil. 932 (2017); A.M. Nos. RTJ-10-2219 & 12-7-130-RTC, 07 March 2017.

In various cases,[34] this Court deemed the demand and receipt of money from party-litigants constitutive of serious misconduct. The instant case should not be treated differently. Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.[35] Respondent's solicitation of money from Tablante in exchange for the acquittal of her brother violates Canon I of the Code of Conduct for Court Personnel, which expressly provides:

SECTION 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemption for themselves or for others.

SECTION 2. Court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions.

Grave misconduct is classified as a grave offense punishable by dismissal from service for the first offense. Corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.[36]

---

[34] *Anonymous v. Namol*, 811 Phil. 317 (2017); A.M. No. P-16-3614, 20 June 2017; 827 SCRA 520; *Alano v. Sahi*, *supra* at note 29; *Office of the Court Administrator v. Panganiban*, 583 Phil. 500 (2008); A.M. Nos. P-04-1916 & P-05-2012, 11 August 2008.

[35] *Supra* at note 27.

[36] *Perez v. Roxas*, A.M. No. P-16-3595, 26 June 2018; 868 SCRA 186.

In addition, this Court agrees that respondent's acts amount to dishonesty and conduct prejudicial to the best interest of the service. Dishonesty is defined as a "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[37] Meanwhile, in *Office of the Court Administrator v. Necessario*,[38] this Court ruled that acts of court personnel outside their official functions may constitute conduct prejudicial to the best interest of the service because these acts violate what is prescribed for court personnel.

By soliciting money from Tablante, respondent committed an act of impropriety which immeasurably affects the honor of the judiciary and the people's confidence in it.[39] She committed the ultimate betrayal of her duty to uphold the dignity and authority of the judiciary by peddling influence to litigants, creating the impression that decisions can be bought and sold.[40]

The public's continuous trust in the judiciary is essential to its existence. In order to gain the litigants' confidence, all employees of the Court, from judges to the lowest clerk must ensure that their conduct exemplifies competence, honesty and integrity. Similarly, if the Court is to enjoy the public's continued patronage, any transgression of ethical rules should not be lightly taken, nor condoned. In this case, respondent unfortunately fell extremely short of the standards that should have governed her life as a public servant. By demanding and receiving money from Tablante, she committed a crime and an act of serious

---

[37] *Mallonga v. Manio*, 604 Phil. 247 (2009); A.M. Nos. P-07-2298 & P-07-2299, 24 April 2009.

[38] 707 Phil. 328 (2013), A.M. No. MTJ-07-1691, 02 April 2013; 694 SCRA 348, citing *Roque v. Grimaldo*, 328 Phil. 1096 (1996); A.M. No. P-95-1148, 30 July 1996; 260 SCRA 1.

[39] *Canlas-Bartolome v. Manio*, 564 Phil. 307 (2007); A.M No. P-07-2397, 04 December 2007; 539 SCRA 333.

[40] *Narag v. Manio*, 608 Phil. 1 (2009); A.M. No. P-08-2579, 22 June 2009; 590 SCRA 206.

impropriety that eroded respect for the law and the judicial institutions.

WHEREFORE, the foregoing premises considered, this Court finds respondent Mary Ann Buzon, Court Stenographer III, Regional Trial Court, Branch 72, Malabon City, **GUILTY** of Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service. Respondent is hereby **DISMISSED** from the service effective immediately, with **CANCELLATION** of her civil service eligibility and **FORFEITURE** of all retirement benefits, excluding accrued leave credits, with disqualification to re-employment in the government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations, and without prejudice to any findings as to her criminal and civil liabilities.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Carandang and *Lazaro-Javier, JJ.*, on official leave.

EN BANC

[A.M. No. MTJ-20-1938. November 17, 2020]
(Formerly A.M. No. 20-02-14-MCTC)

FAILURE TO DISCLOSE CASES SUBMITTED FOR DECISION AND PENDING MOTIONS OF JUDGE TIRSO F. BANQUERIGO, THEN PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT, TAYASAN-JIMALALUD, TAYASAN, NEGROS ORIENTAL

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LEGAL ETHICS; JUDGES; PERIOD FOR LOWER COURTS TO DECIDE OR RESOLVE CASES; GROSS INEFFICIENCY; THE FAILURE OF A JUDGE TO DECIDE A CASE WITHIN THE REQUIRED PERIOD IS GROSS INEFFICIENCY THAT WARRANTS AN ADMINISTRATIVE SANCTION.— Section 15 (1), Article VIII of the Constitution mandates lower courts to decide or resolve cases or matters for decision or resolution within three (3) months from date of submission. Section 5 of Canon 6 of the New Code of Judicial Conduct provides that judges should perform all judicial duties efficiently, fairly and with reasonable promptness. Similarly, Canon 3, Rule 3.05 of the Code of Judicial Conduct states that a judge should promptly dispose of the court's business and decide cases within the required periods. Judges are to be held at a higher standard in the performance of their duties, and the failure to fulfill this duty would not only violate every litigant's constitutional right to the speedy disposition of cases, but will also hold the erring judge administratively liable for the offense. Under Section 9 (1), Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is a less serious charge punishable by either suspension from office without salary or benefits, or a fine.

. . . This Court has consistently held that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of said

rule is a ground for administrative sanction against the defaulting judge.

. . .

Judges are reminded of their duty to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.

2. ID.; ID.; ID.; ID.; DISHONESTY; A JUDGE'S LACK OF TRANSPARENCY AS TO THE TRUE STATUS OF THEIR CASE DOCKETS IS DISHONESTY.— [I]t was respondent's lack of transparency as to the true status of his case docket which prevented the OCA from immediately conducting an audit and allowed him to retire without answering for the pending matters in his court. Dishonesty is deemed a grave offense, punishable by the ultimate penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.

3. ID.; ID.; ID.; ID.; COMPLAINTS AGAINST JUDGES FILED AFTER THEIR RETIREMENT; RETIREMENT IS NOT AN IMPEDIMENT FOR IMPOSING AN ADMINISTRATIVE SANCTION.— Since respondent's clearance has not yet been issued, the Court can still penalize him by imposing upon him a fine, to be deducted from his retirement benefits, without prejudice to the filing of proper civil or criminal cases.

. . .

We are aware that in several instances, this Court dismissed complaints against judges filed after their retirements. Ordinarily, respondent's compulsory retirement in October 2019 would have effectively divested the OCA of authority to institute an administrative complaint against him, and for this Court to impose administrative sanctions for respondent's misdeeds. However,

> we find of little consequence the fact that the audit and resulting administrative case against herein respondent had been lodged after his retirement. After all, such predicament was a result of respondent's actions. And this Court cannot allow his retirement to be an impediment for imposing upon him the fitting administrative sanction.
>
> . . .
>
> In *Letter dated November 12, 2004 of Judge Adolfo R. Malingan*, it was held that discovery of a judge's failure to decide cases within the reglementary period after retirement, and pending clearance processing, cannot detract the Court from holding a judge accountable. To rule otherwise would put premium to gross inefficiency of a judge and negligence or possible collusion with those in charge of processing applications for retirement of judges in skipping on the submission of the required list of pending decisions, among others.

D E C I S I O N

ZALAMEDA, *J.*:

In a Memorandum[1] dated 05 February 2020 addressed to Chief Justice Diosdado M. Peralta, Court Administrator Jose Midas Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino reported that respondent Judge Tirso F. Banquerigo (respondent), then Presiding Judge of the Municipal Circuit Trial Court (MCTC), Tayasan-Jimalalud, Tayasan, Negros Oriental, misrepresented and concealed to the Court twenty-five (25) cases still pending before his retirement, eighteen (18) of which were submitted for decision, while seven (7) others had unresolved motions. Respondent compulsorily retired from the Judiciary on 04 October 2019.

On February 2019, respondent reported a caseload of only fifty-six (56) cases. As a matter of policy, his court should have been the subject of a judicial audit six (6) months before

[1] *Rollo*, pp. 1-6.

his retirement. Nevertheless, the Office of the Court Administrator (OCA) decided to forego the judicial audit considering respondent's minimal caseload, his previous monthly report of cases indicating that he had no case submitted for decision, the expenses to be incurred by the audit team, and the time and resources to be spent for the same.

However, it was later found that at the time of respondent's retirement on October 2019, he still had sixty (60) active cases. On 07 January 2020, pending the issuance of respondent's clearance, the OCA received copies of the Tayasan-Jimalalud MCTC's Monthly Report of Cases for September 2019,[2] October 2019,[3] and November 2019,[4] and subsequently, an amended Monthly Report of Cases for October 2019.[5] Readily apparent in the amended October 2019 and the November 2019 reports were the entries for nine (9) civil and nine (9) criminal cases already submitted for decision, but remained undecided. Ms. Jocele R. Valencia (Valencia), the Branch Clerk of Court, disclosed these cases were not indicated in the first October 2019 report upon instruction of respondent. The corrections were made only upon the request of Acting Presiding Judge Katrina C. Gonzales-Pasicaran after she assumed the post and conducted a physical inventory of the cases. The OCA also found seven (7) motions left unresolved by respondent.[6]

The cases submitted for decision were as follows:

	Case No.	Accused/ Parties	Nature	Date Submitted	Date Due	Delay incurred until 03 October 2019

[2] *Id.* at 33-35.

[3] *Id.* at 36-38.

[4] *Id*. at 42-44.

[5] *Id*. at 39-41.

[6] *Id*. at 2.

1	361	Sps. Jiji Erk, et al. vs. Artemio Ojales, et al.	Damages with prayer for TRO and/or Preliminary Injunction	03 October 2003	31 October 2003	15 years, 9 months and 2 days
2	388	Roberto Lim vs. Dolores Panoy, et al.	Unlawful Detainer and Damages	08 February 2007	10 March 2007	12 years, 6 months and 23 days
3	2758-J	Federico Real	Malicious Mischief	14 January 2009	13 February 2009	10 years, 7 months, and 20 days
4	390	Felixberto Duplo, et al. vs. Vernon Barraquias	Unlawful Detainer and Damages	23 May 2008 (defendant) 09 July 2010 (plaintiff)	08 August 2010	9 years, 1 month and 25 days
5	2954-T	Jessica Tubio	Malicious Mischief	18 January 2011	17 February 2011	8 years, 7 months and 16 days
6	2953-T	Jessica Tubio	Grave Oral Defamation	18 September 2011	17 December 2011	7 years, 9 months and 16 days
7	2966-J	Ambrosio de la Lina	Grave Slander	20 February 2013	21 May 2013	6 years, 4 months and 12 days
8	320	Abdulah Bahandi, et al. vs. Andrew Kadile	Recovery of Possession, Demolition and Damages	27 August 2013	25 November 2013	5 years, 10 months and 8 days

9	3057-J	Ariel Alberto	Reckless Imprudence resulting in Less Serious Physical Injuries	07 September 2016	07 October 2016	2 years, 11 months and 26 days
10	420	Emiliano Dayuday, et al. vs. Welbita dela Lina, et al.	Unlawful Detainer, Ejectment and Damages	09 December 2016	08 January 2017	2 years, 8 months and 25 days
11	3082-J	Cipriano Huradas	Grave Threats	09 November 2016	07 February 2017	2 years, 7 months and 26 days
12	427	Gabriel Cimafrancia, Jr. vs. Celso Estolonio	Forcible Entry	23 January 2017	22 February 2017	2 years, 7 months and 11 days
13	430	Gina Z. Ridad, et al. vs. Richard Abujan, et al.	Unlawful Detainer and Damages	10 October 2017	11/09/17	1 year, 10 months and 24 days
14	3116-T	Ronald Casilo	Attempted Homicide	27 October 2017	25 January 2018	1 year, 8 months and 8 days
15	3106-T	Bonifacio Amistoso	Other Mischief	02 March 2018	01 April 2018	1 year, 6 months and 2 days
16	2988-T	Camilo Soreño, et al.	Slander by Deed	18 June 2018	16 September 2018	1 year and 17 days
17	436	ORBYSY Holdings, Inc. vs. Gerald Rio, et al.	Unlawful Detainer	23 April 2019	23 May 2019	4 months and 10 days

18	434	Pedro Calijan, et al. vs. Pedrino Calijan, et al.	Judicial Settlement, Partition and Damages	29 April 2009	28 July 2019	2 months and 5 days

Findings and Recommendations of the OCA

The OCA found that respondent concealed the eighteen (18) cases submitted for decision, which were not decided within the reglementary period to render a decision. According to the OCA, in view of the attending circumstances, a fine in the amount of Php20,000.00 would be a mere slap on the wrist, but noted that forfeiture of respondent's retirement benefits would be too harsh.[7] Accordingly, the OCA recommended that the case be re-docketed as a regular administrative matter, and that respondent be fined in the amount of Php300,000.00, to be deducted from his retirement benefits.[8]

In addition, the OCA recommended that Valencia be directed to show cause why she should not be administratively charged for her failure to indicate the true number of cases submitted for decision in the court's Monthly Report of Cases from October 2003 to October 2019.[9]

Ruling of the Court

The Court adopts and approves the recommendation of the OCA to re-docket the case as a regular administrative matter, but orders respondent to pay a fine of Php100,000.00 instead of Php300,000.00 to be deducted from his retirement benefits, and directs Valencia to show cause why she should not be administratively charged.

Section 15 (1), Article VIII of the Constitution mandates lower courts to decide or resolve cases or matters for decision

---

[7] *Id.* at 5.

[8] *Id.* at 6.

[9] *Id.*

or resolution within three (3) months from date of submission. Section 5 of Canon 6 of the New Code of Judicial Conduct provides that judges should perform all judicial duties efficiently, fairly and with reasonable promptness. Similarly, Canon 3, Rule 3.05 of the Code of Judicial Conduct states that a judge should promptly dispose of the court's business and decide cases within the required periods. Judges are to be held at a higher standard in the performance of their duties, and the failure to fulfill this duty would not only violate every litigant's constitutional right to the speedy disposition of cases, but will also hold the erring judge administratively liable for the offense. Under Section 9 (1), Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is a less serious charge punishable by either suspension from office without salary or benefits, or a fine.[10]

Based on the OCA's audit, respondent had a total of twenty-five (25) cases pending before his court, eighteen (18) of which were already submitted for decision, while seven (7) others had unresolved motions. The delay in the resolution of these cases ran for as long as fifteen (15) years at the time of the audit. Worse, three (3) of those cases remained unresolved for more than a decade. For these, respondent should have been administratively dealt with. This Court has consistently held that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of said rule is a ground for administrative sanction against the defaulting judge.[11]

To emphasize, it was respondent's lack of transparency as to the true status of his case docket which prevented the OCA from immediately conducting an audit and allowed him to retire without answering for the pending matters in his court. Dishonesty is deemed a grave offense, punishable by the ultimate

---

[10] *Office of the Court Administrator v. Andaya*, A.M. No. RTJ-09-2181, 25 June 2013, 712 Phil. 33 (2013).

[11] *Lambino v. De Vera*, A.M. No. MTJ-94-1017, 07 July 1997, 341 Phil. 62 (1997).

penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the government service.[12]

In some cases, however, the Court refrained from imposing the maximum penalty based on several factors attendant to the case, including length of service and the case being the first offense against the erring judge.[13] We note in agreement the OCA's observation that a fine in the amount of Php20,000.00 would be a mere slap on the wrist, but a forfeiture of respondent's retirement benefits would be too harsh. Since respondent's clearance has not yet been issued, the Court can still penalize him by imposing upon him a fine, to be deducted from his retirement benefits, without prejudice to the filing of proper civil or criminal cases.

The Court, in *Lambino v. De Vera*,[14] dismissed the erring judge for failure to timely resolve cases pending before his court within the required time compounded by his act of submitting fake certifications of service and collecting his salaries upon certification that he has no pending matters to resolve.

In *Re: Judge Segundo Catral*,[15] the Court fined the retired judge for submitting a false certification of pending cases to support his retirement papers. However, the OCA later found there were still cases left unresolved. In imposing the appropriate fine despite his retirement, the Court considered Judge Catral's patent dishonesty in submitting the false certification.

We are aware that in several instances, this Court dismissed complaints against judges filed after their retirements.[16]

---

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] A.M. No. 98-12-377-RTC, 26 July 1999.

[16] *See Office of the Court Administrator v. Silongan*, A.M. No. P-13-3137, 23 August 2016; *Re: Missing Exhibits and Court Properties in RTC Branch 4, Panabo City*, A.M. No. 10-2-41-RTC (Resolution), 27 February 2013, 705 Phil. 8 (2013); *Office of the Court Administrator v. Mantua*,

Ordinarily, respondent's compulsory retirement in October 2019 would have effectively divested the OCA of authority to institute an administrative complaint against him, and for this Court to impose administrative sanctions for respondent's misdeeds.[17] However, we find of little consequence the fact that the audit and resulting administrative case against herein respondent had been lodged after his retirement. After all, such predicament was a result of respondent's actions. And this Court cannot allow his retirement to be an impediment for imposing upon him the fitting administrative sanction.

In *Moncada v. Cervantes*,[18] the Court ruled that it is irrelevant even if Moncada filed his complaint one (1) day after the retirement of Judge Cervantes. The administrative case filed against Judge Cervantes was in relation to his duties as a judge. As such, even if he has retired from the service, if found to be remiss in upholding his sworn responsibility, he could still be penalized for the infractions he has committed. Thus, the Court directed Judge Cervantes to pay a fine instead.

Similarly, in *Office of the Court Administrator v. Paredes*,[19] the Court administratively dealt with and fined Paredes, a former clerk of court who had already retired after an audit conducted after his retirement revealed discrepancies in his books.

In *Letter dated November 12, 2004 of Judge Adolfo R. Malingan*,[20] it was held that discovery of a judge's failure to

---

A.M. No. RTJ-11-2291, 08 February 2012, 681 Phil. 261 (2012); *Office of the Court Administrator v. Andaya*, A.M. No. RTJ-09-2181 (Resolution), 25 June 2013, 712 Phil. 33 (2013).

[17] *See Office of the Court Administrator v. Retired Judge Andaya*, A.M. No. RTJ-09-2181, 25 June 2013, 712 Phil. 33 (2013).

[18] A.M. No. MTJ-06-1639 (Formerly OCA-IPI No. 05-1803-MTJ), 28 July 2006, 529 Phil. 1 (2006).

[19] A.M. No. P-06-2103 (Formerly A.M. No. 05-7-430-RTC), 17 April 2007, 549 Phil. 879 (2007).

[20] A.M. No. MTJ-05-1586 [formerly A.M. 05-2-36-MCTC] (Resolution), 20 October 2005, 510 Phil. 215 (2005).

decide cases within the reglementary period after retirement, and pending clearance processing, cannot detract the Court from holding a judge accountable. To rule otherwise would put premium to gross inefficiency of a judge and negligence or possible collusion with those in charge of processing applications for retirement of judges in skipping on the submission of the required list of pending decisions, among others.[21]

Judges are reminded of their duty to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[22]

In the present case, considering that respondent left a number of cases undecided for unreasonable periods ranging from ten (10) to fifteen (15) years, as well as his dishonesty in submitting a false report of pending cases, the fine of Php100,000.00 to be deducted from his retirement benefits is proper.

WHEREFORE, the Court **ADOPTS** and **APPROVES** the recommendation of the Office of the Court Administrator. Respondent Judge Tirso F. Banquerigo is **GUILTY** of gross inefficiency and dishonesty and is **DIRECTED** to pay a fine of Php100,000.00, to be deducted from his retirement benefits.

Ms. Jocele R. Valencia, the Branch Clerk of Court of the Municipal Circuit Trial Court, Tayasan-Jimalalud, Tayasan, Negros Oriental, is **DIRECTED** to **SHOW CAUSE** within fifteen (15) days from notice, why she should not be administratively charged for her failure to indicate in the court's

---

[21] *Id.*

[22] *Re: Baluma*, A.M. No. RTJ-13-2355, 02 September 2013.

Monthly Report of Cases from October 2003 to October 2019 the cases which were submitted for decision before Judge Tirso F. Banquerigo.

The Acting Presiding Judge of the Municipal Circuit Trial Court, Tayasan-Jimalalud, Tayasan, Negros Oriental, is **DIRECTED** to act on the eighteen (18) cases submitted for decision and seven (7) cases for resolution with dispatch, and to inform the Court of the status of these cases within thirty (30) days from notice.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Inting, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Carandang and *Lazaro-Javier, JJ.*, on official leave.

EN BANC

[A.M. No. RTJ-21-015. November 17, 2020]
(Formerly OCA IPI No. 13-4162-RTJ)

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *Complainant, v.* **JUDGE WINLOVE M. DUMAYAS, Presiding Judge of the Regional Trial Court of Makati City, Branch 59,** *Respondent.*

[OCA IPI No. 15-4381-RTJ. November 17, 2020]

FRANCIS R. YUSECO, JR., *Complainant, v.* **HONORABLE WINLOVE M. DUMAYAS, Presiding Judge, Branch 59, Regional Trial Court of Makati City,** *Respondent.*

SYLLABUS

1. **REMEDIAL LAW; LEGAL ETHICS; INHERENT POWERS OF COURTS; THE POWER OF A COURT TO AMEND AND CONTROL ITS PROCESSES AND ORDERS TO MAKE THEM CONFORMABLE TO LAW AND JUSTICE INCLUDES THE RIGHT TO REVERSE ITSELF, ESPECIALLY WHEN IT HAS COMMITTED AN ERROR OR MISTAKE IN JUDGMENT.—** Under Section 5(g) of Rule 135, every court shall have the inherent power to amend and control its processes and orders, so as to make them conformable to law and justice. This power includes the right to reverse itself, especially when, in its honest opinion, it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party-litigant.

2. **ID.; ID.; ID.; JUDGES' FAILURE TO INTERPRET THE LAW OR TO PROPERLY APPRECIATE THE EVIDENCE PRESENTED DOES NOT NECESSARILY RENDER THEM ADMINISTRATIVELY LIABLE, EXCEPT IF THEIR ERRORS ARE TAINTED WITH FRAUD, DISHONESTY, GROSS IGNORANCE, BAD FAITH, OR DELIBERATE INTENT TO DO AN INJUSTICE.—** [I]t is

settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

3. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; FAVORING AN ARGUMENT BASED ON AN ALREADY SUPERSEDED LAW AND JURISPRUDENCE AMOUNTS TO GROSS IGNORANCE OF THE LAW.— [J]udges have the concomitant duty to be well-informed, to be familiar with the statutes and procedural rules at all times. When the law is so elementary, not to know it or to act as if one does not know it, constitutes gross ignorance of the law.

. . .

Judge Dumayas indubitably exhibited gross ignorance of the law and prevailing jurisprudence by favoring the oppositors' argument based on an already superseded law and jurisprudence. It was his obligation to know that RA No. 265 had already been expressly repealed by RA No. 7653 as far back as 1993. Consequently, the ruling in *Banco Filipino*, which was decided under the old law, no longer applies.

4. ID.; ID.; ID.; POLITICAL LAW; POLICE POWER OF THE STATE; THE MONETARY BOARD'S POWER AND AUTHORITY TO CLOSE BANKS AND LIQUIDATE THEM THEREAFTER, WHEN PUBLIC INTEREST SO REQUIRES, IS AN EXERCISE OF THE POLICE POWER OF THE STATE,WHICH MAY BE RESTRAINED OR SET ASIDE BY THE COURT THROUGH A PETITION FOR *CERTIORARI* ONLY.— Judge Dumayas clearly ought to have known at the outset that the MB's power and authority to close banks, and liquidate them thereafter, when public interest so requires is an exercise of the police power of the State. The actions of the MB shall be final and executory and may not be restrained or set aside by the court except through a petition for *certiorari* on the ground that the action taken was in excess of jurisdiction, or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.

Considering the PDIC instituted liquidation proceedings, Judge Dumayas' actions should have been limited to the declaration of creditors and their rights, and the determination of their order of payment. It was not within his authority to determine whether or not UDB could still be rehabilitated.

Judge Dumayas' flip-flopping on the issues brought before him is truly inexcusable. Even granting that he made an honest mistake at first, his subsequent actions, taken together, can only be considered as gross ignorance of the law. To be sure, Judge Dumayas, being a magistrate, is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles.

5. ID.; ID.; ID.; SANCTIONS FOR SERIOUS CHARGES, SUCH AS GROSS IGNORANCE OF THE LAW OR PROCEDURE; FINE IS THE APPROPRIATE PENALTY IF THE ERRING JUDGE HAD ALREADY BEEN DISMISSED FROM THE SERVICE IN A PREVIOUS CASE.— Under the doctrine of *res ipsa loquitur*, the Court may impose its disciplinary authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law or misconduct. Section 8 (9), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies gross ignorance of the law or procedure as a serious charge. Meanwhile, Section 11(A) of the same Rule provides that a serious charge merits any of the following sanctions: (1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) Suspension from office without salary and other benefits for more than three (3), but not exceeding six (6), months; or (3) A fine of more than Php20,000.00, but not exceeding Php40,000.00.

In light of the Court's decision in A.M. No. RTJ-15-2435 dismissing Judge Dumayas from the service, the Court deems it appropriate in this case to impose on him a fine in the amount of Php40,000.00.

6. ID.; ID.; ID.; WHEN JUDGES EXHIBIT AN UTTER LACK OF PROFICIENCY WITH THE RULES OR WITH SETTLED JURISPRUDENCE, THEY ERODE THE PUBLIC'S CONFIDENCE IN THE COMPETENCE OF OUR COURTS.— In fine, competence is a mark of a good judge. When a judge exhibits an utter lack of proficiency with the rules or with settled jurisprudence, he erodes the public's confidence in the competence of our courts. This Court should, therefore, refrain from being lenient, when doing so would give the public the impression that incompetence is tolerated in the Judiciary.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio & Acorda for Philippine Deposit Insurance Corporation.

D E C I S I O N

ZALAMEDA, *J.*:

Before the Court are two (2) administrative cases filed against respondent Judge Winlove M. Dumayas (Judge Dumayas), Presiding Judge of Branch 59, Regional Trial Court (RTC) of Makati City.

In A.M. No. RTJ-21-015, the Philippine Deposit Insurance Corporation (PDIC) filed a Complaint[1] against Judge Dumayas for gross ignorance of the law or procedure in connection with Spec. Proc. No. M-6069, entitled *In re: Petition for Assistance in the Liquidation of Unitrust Development Bank.*

Meanwhile, in OCA IPI No. 15-4381-RTJ, Francis R. Yuseco, Jr. (Yuseco) charged Judge Dumayas with gross ignorance of the law, gross incompetence and gross abuse of authority.[2]

---

[1] *Rollo* (A.M. No. RTJ-21-015) pp. 1-43.

[2] *Rollo* (OCA IPI No. 15-4381-RTJ), pp. 1-29.

Antecedent Facts

On 04 January 2002, the Monetary Board (MB) of the Bangko Sentral ng Pilipinas (BSP) passed Resolution No. 19[3] prohibiting Unitrust Development Bank (UDB) from doing business in the Philippines. In accordance with Section 30[4] of Republic Act

---

[3] *Rollo* (A.M. No. RTJ-21-015), p. 44.

[4] Section 30. *Proceedings in Receivership and Liquidation*. - Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designed as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in nonspeculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

(RA) No. 7653,[5] the assets and affairs of UDB were placed under receivership of PDIC.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file ex parte with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution

(2) convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

[5] The New Central Bank Act.

Yuseco, Tooru Nagasawa (Nagasawa), Leopoldo Valcarcel, Pedro Montañez (collectively, oppositors), claiming to be stockholders of UDB, filed a class suit for injunction to challenge MB Resolution No. 19 on 31 July 2002. It was docketed as Civil Case No. 02-894 entitled, *Francisco Yuseco, Jr. et al. v. Philippine Deposit Insurance Corporation, and in their personal capacities: Norberto Nazareno, Rosalinda Casiguran, Jesus Clariza, Tereza Garcia, Sandra Diaz, and the Monetary Board of the Bangko Sentral ng Pilipinas*. It was later amended on 02 August 2011, to include Bank Resumption of Operations, and a Petition for *Certiorari* on MB Resolution No. 64, issued on 20 January 2005, with Damages.[6]

On 05 November 2002, then Presiding Judge Rebecca Mariano of Branch 136, RTC Makati City, issued a writ of preliminary injunction. However, the order was later annulled by the Court of Appeals (CA) in its 19 January 2004 Decision[7] in CA-G.R. No. 76801. The CA's ruling became final and executory.

Accordingly, the MB passed Resolution No. 64[8] on 20 January 2005, directing PDIC to proceed with the liquidation of UDB. The PDIC then filed before the RTC of Makati City a Petition for Assistance in the Liquidation of UDB,[9] which was raffled to Judge Dumayas. Later, Judge Dumayas issued an Order[10] dated 06 July 2005, giving due course to the petition, constituting his court as a liquidation court, and directing the creditors of UDB to file their claims either with the Deputy Liquidator or directly with the PDIC.

---

[6] *Rollo* (A.M. No. RTJ-21-015), pp. 45-57. Civil Case No. 02-894, for: "Class Suit for Injunction, Bank Resumption of Operations, and a Petition for Certiorari on the Monetary Board Resolution No. 64, with Damages."

[7] *Id.* at 63-82; penned by Justice (later SC Justice) Martin S. Villarama, Jr. with the concurrence of Justice Mario L. Guariña III and Justice Jose C. Reyes, Jr. (now a retired member of this Court).

[8] *Id*. at 84.

[9] *Id*. at 85-92.

[10] *Id.* at 93.

In the course of the proceedings, the PDIC filed a Motion for Approval of the Project for Distribution (POD) of the Assets of UDB,[11] stating that all depositors and creditors of UDB, except itself and PLDT, shall be paid in cash because there were sufficient funds on hand. On 19 March 2007, Judge Dumayas issued an Order,[12] approving the POD.

Meanwhile, the oppositors filed a series of motions in an attempt to suspend or stop the liquidation of UDB. These motions were denied by Judge Dumayas in the Orders dated 14 January 2009,[13] 03 May 2011[14] and 16 May 2011.[15] Thereafter, Yuseco

---

[11] *Id*. at 127-272.

[12] *Id*. at 283. It reads:

"Finding the Motion for Approval of the Project Distribution of the Assets of Unitrust Development Bank, Inc. to be impressed with merit, the motion is hereby GRANTED.

Accordingly, the following are hereby APPROVED:

1. The reimbursement of the receivership/liquidation fees and expenses incurred and/or advanced by the Philippine Deposit Insurance Corporation xxx;
2. The provision for future expenses in the amount of Php8,000,000.00 for the administration and conversion of the remaining non-cash assets of Unitrust Development Bank which amount shall be deducted from the available fund;
3. The partial Project Distribution of Assets of Unitrust Development Bank as set forth in paragraph 9 and Annex E of the instant Motion.

SO ORDERED."

[13] *Id*. at 284. It reads:

"On the motion to suspend the liquidation of Unitrust's Assets, as correctly pointed out by the petitioner in its comment, the Court has no jurisdiction to suspend the liquidation of the affairs of Unitrust.

Premises considered, the Oppositor's motion is hereby denied. On the other hand, Petitioner is hereby allowed to present evidence in support of the approved Project Distribution on January 30, 2009 at 8:30 o'clock in the morning. Notify the parties.

SO ORDERED."

[14] *Id*. at p. 285. It reads:

"xxx to restore UDB is impractical already because, when the Bangko Sentral placed UDB under liquidation, its franchise has been withdrawn by the Bangko Sentral ng Pilipinas. Furthermore, with the approval of the Partial

filed a Motion for Reconsideration[16] of the Orders dated 03 May 2011 and 16 May 2011, relying on the case of *Banco Filipino*

Project of Distribution the court already approved the payments of claims of depositors against UDB and xxx started paying the depositors of UDB from the assets of the bank. xxx to allow the placing of UDB under receivership is too late.

WHEREFORE, premises considered, the motion to place UDB under receivership is DENIED."

[15] *Id*. at 285-286. It reads:

"The motion is not impressed with merit.

The issue raised by oppositors-movants pertains to the propriety of UDB's liquidation. Records show that the same has been resolved in the following instances:

x x x

It appears that in all the three instances afore-enumerated, the issue on the propriety of the liquidation of UDB was upheld. Therefore, when petitioner PDIC filed the instant petition for assistance in the liquidation of UDB, the determination of propriety of placing UDB under liquidation is not necessary.

Finally we must be reminded that this Court is a liquidation court whose task is to assist in the implementation of the liquidation of the UDB, as defined and mandated under Section 30 of R.A. 7653, the functions of the Court are:

[1] adjudicate disputed claims against the institution;

[2] assist the enforcement of individual liabilities of stockholders, directors and officers, and

[3] decide on other issues as may be material to implement the liquidation plan adopted.

The afore-enumerated tasks of a liquidation court limit this Court only to the actual implementation of the liquidation. Considering that petitioner is not assailing the propriety of the liquidation of UDB, the determination of whether there is fraud, misrepresentation and violation of pertinent laws attendant to the filing of this petition to justify dismissal of the petition, is immaterial. Movants-oppositors should have sought the setting aside of MB Resolution No. 64 via petition for certiorari, instead. To seek the dismissal of the instant petition on alleged fraud, misrepresentation and violation of pertinent laws from this Court is useless effort, because this Court in its function as liquidation court, has no jurisdiction to dismiss the petition.

WHEREFORE, premises considered, the motion to dismiss is hereby DENIED. Oppositors' Supplemental to the Opposition with Motion to Dismiss is hereby expunged from the records of this case.

SO ORDERED."

[16] *Id*. at 288-297.

Savings and Mortgage Bank v. The Monetary Board,[17] which was decided under the auspices of Section 29[18] of RA No. 265 or the old Central Bank Act. Yuseco argued that the MB acted with arbitrariness and bad faith in ordering the closure of UDB without first fully complying with the mandatory requirements of RA No. 265.

On 25 August 2011, Judge Dumayas issued an Order,[19] partially granting Yuseco's motion, setting aside the Order dated 03 May 2011, and directing the PDIC to cease and desist from further liquidating the UDB. The Order read in part:

> The blatant disregard by the Monetary Board of the proper compliance with the said mandatory requirements, gives authority for this court to set aside the decision of the Monetary Board, it appearing that the latter's action is plainly arbitrary and made in bad faith. xxx The courts may interfere with the discretion of the Central Bank. Where the CB engaged to support the distressed bank in

---

[17] G.R. No. 70054, 11 December 1991.

[18] SECTION 29. *Proceedings upon insolvency*. — Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and designate an official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefits of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank or non-bank financial intermediary performing quasi-banking functions.

x x x x

[19] *Rollo* (A.M. No. RTJ-21-015), pp. 298-302.

exchange for control of its management and additional mortgages in its favor, then courts may interfere with the CB's exercise of discretion in determining whether or not a distressed bank shall be supported or liquidated. Discretion has its limits and has never been held to include arbitrariness, discrimination or bad faith.

Finally, the healthy financial position of UDB was admitted by Atty. Gilroy V. Billones, petitioner's counsel. This admission is duly supported by the Bank's Statement of Affairs as of June 2002, wherein it is reflected that the bank's combined capital assets is more than sufficient to answer for all the bank's liabilities. xxx

WHEREFORE, premise[s] considered, the Oppositor's Motion for Reconsideration of the Order of the Court dated May 3, 2011 [,] denying the oppositor's motion to place UDB under receivership is hereby GRANTED. The Order of the Court dated May 3, 2011 is reconsidered and set aside. Accordingly, petitioner PDIC is hereby ordered to cease and desist from further liquidating UDB. Anent the two [2] Orders dated May 16, 2011, the motion to reconsider the same is DENIED.

SO ORDERED.[20]

Subsequently, the PDIC filed a Motion for Partial Reconsideration,[21] arguing that under Section 30 of RA No. 7653, the liquidation court's jurisdiction is limited to the adjudication of claims of depositors and creditors of UDB, and in assisting liquidation efforts. Judge Dumayas granted the motion.[22]

Upon Yuseco's Motion for Partial Reconsideration,[23] however, Judge Dumayas made another about turn and reinstated his Order dated 25 August 2011, which prohibited the PDIC from further liquidating UDB. In the Order[24] dated 19 June 2012, he explained the reversal in this wise:

---

[20] *Id*. at 301-302.

[21] *Id*. at 303-315.

[22] *Id*. at 316.

[23] *Id*. at 317-325.

[24] *Id*. at 326-327.

Considering that this Court has clearly found during the hearing of this petition, the healthy financial position of UDB based on the admission by petitioner's counsel, Atty. Gilroy Billiones, whose admission is duly supported by the Bank Statement of Affairs as of June 2002, wherein it is reflected that the bank's combined capital assets is more than sufficient to answer for all the bank's liabilities this Court must take this into consideration. xxx Quite clearly, UDB had more assets as against liabilities and hence could not be, under any circumstance[,] be considered in the state of insolvency. Verily, petitioner PDIC should cease and desist from further implementing its liquidation.

Once again, PDIC filed a Motion for Partial Reconsideration,[25] pointing out the incongruity of being required by Judge Dumayas to desist from further liquidating the assets of UDB, while at the same time being compelled, under penalty of contempt, to do an act of liquidation by paying all of UDB's depositors and creditors.

This time, however, Judge Dumayas finally stood firm, as he denied PDIC's motion in his Order[26] dated 17 December 2012. He explained that there is no conflict in allowing payments to all the bank depositors and creditors in accordance with his Orders dated 19 June 2012 and 22 June 2012. He disposed as follows:

WHEREFORE, based on the foregoing, the court hereby issues this Resolution as follows:

1. The court upholds its June 19, 2012 order, directing petitioner to cease and desist from further liquidating the assets of UDB;

2. Petitioner is compelled under the penalty of contempt to strictly and promptly comply with its June 22, 2012 order to pay all UDB depositors and creditors xxx.

x x x

SO ORDERED.[27]

---

[25] *Id*. at 328-339.

[26] *Rollo* (OCA IPI No. 15-4381-RTJ), pp. 84-86.

[27] *Id*. at 86.

Judge Dumayas' new Order prompted PDIC to file before the CA a Petition for *Certiorari*, docketed as CA-GR SP No. 128241.

In the *interim*, Judge Dumayas issued an Omnibus Order dated 10 July 2014,[28] which reiterated his Order dated 17 December 2012. Subsequently, however, he reversed himself anew when he issued a Resolution dated 01 October 2014,[29] authorizing the payment of the Receivership and Liquidation Expenses (RLE) in the amount of Php35,488,029.04, plus additional expenses in the amount of Php2,254,748.09.

Meanwhile, the CA rendered a Decision dated 28 November 2014,[30] granting the Petition for *Certiorari* of PDIC, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Petition for Certiorari is GRANTED. The assailed Orders dated June 19, 2012 and December 17, 2012, issued by the Regional Trial Court, Branch 59, Makati City, in Spl. Pro. M-6069 are hereby ANNULLED and SET ASIDE. All Orders subsequently issued in furtherance of, or to implement the assailed Orders, and those issued with like or similar import as the assailed Orders, are declared void and of no force and effect. The court, in Spl. Pro. M-6069, is directed to PROCEED with and ASSIST the Philippine Deposit and Insurance Corporation in the liquidation of Unitrust Development Bank in accordance with the approved Liquidation Plan without delay.
>
> SO ORDERED.[31]

Pursuant to the CA decision, Judge Dumayas issued an Omnibus Order dated 26 January 2015,[32] denying Yuseco and

---

[28] *Id*. at 94-98.

[29] *Id*. at 109-113.

[30] *Id*. at 146-166; penned by Associate Justice Victoria Isabel A. Paredes, with the concurrence of Justices Isaias P. Dicdican and Amy C. Lazaro-Javier (now a Member of this Court).

[31] *Id*. at 165.

[32] *Id*. at 116-125.

Nagasawa's Joint Motion for Partial Reconsideration of the Order dated 01 October 2014, which authorized the payment of RLE and additional expenses by PDIC. The Omnibus Order likewise denied their Motion for Issuance of *Subpoena Duces Tecum and Ad Testificandum.*

The oppositors then filed a Recusation with Motion for Reconsideration, seeking the reversal of the Omnibus Order and the inhibition of Judge Dumayas. In a Resolution[33] dated 16 February 2015, Judge Dumayas voluntarily inhibited himself.

Meanwhile, the Motion for Reconsideration of the CA Decision filed by Yuseco and Nagasawa was denied in a Resolution[34] dated 06 April 2015.

Yuseco and Nagasawa, thus, filed a petition for review before this Court, docketed as G.R. No. 217899. In a Resolution dated 29 July 2015, the Court denied the petition on procedural ground. Subsequently, the Court issued a Resolution dated 02 September 2015, denying Yuseco and Nagasawa's motion for reconsideration.[35]

Unperturbed, Yuseco and Nagasawa filed a motion to re-open the case and to refer the same to the Court *En Banc*. This was denied by the Second Division in its Resolution dated 02 November 2015, holding that aside from the procedural deficiencies in the petition, the petitioners failed to show any reversible error on the part of the CA to warrant the Court's exercise of its discretionary appellate jurisdiction.[36]

Based on the foregoing events, PDIC filed an administrative complaint against Judge Dumayas for gross ignorance of the law on 20 November 2013. On the other hand, Yuseco charged Judge Dumayas with gross ignorance of the law, gross

---

[33] *Id*. at 174-176.

[34] *Id*. at 167-173.

[35] *Id*. at 181.

[36] *Id.*

incompetence, and grave abuse of authority in his Complaint received by the OCA on 24 March 2015.

Evaluation Reports of the Office of the Court Administrator

In its Report[37] dated 20 November 2017 in OCA IPI No. 13-4162-RTJ, the Office of the Court Administrator (OCA) found Judge Dumayas guilty of gross ignorance of the law or procedure, and recommended the re-docketing of the complaint as a regular administrative matter. As to penalty, the OCA recommended Judge Dumayas' dismissal from the service, with forfeiture of his retirement benefits, except accrued leave credits, and with prejudice to reinstatement in any branch of the government including government-owned and controlled corporations.[38]

The OCA'S recommendation was based on the following evaluation:

> Although a judge may be lauded for his effort to rectify his ruling which he realized to be erroneous, respondent Judge Dumayas must also heed his duty to know the law and to avoid any impression of ignorance thereof or badge of impropriety to protect the image and integrity of the judiciary. The constant flip-flopping in his rulings puts to question his probity and decisiveness, while betraying his lack of understanding of existing jurisprudence and applicable provisions of law, particularly Section 30 of the New Central Bank Act that expressly grants to the Monetary Board of the BSP the exclusive, original jurisdiction to determine whether a closed bank should be placed under receivership or liquidation. This provision of law is so basic that it behooves him to know the same. To be sure, his Orders dated 25 August 2011, 19 June 2012 and 17 December 2012, which directs complainant PDIC to "cease and desist from further liquidating UDB," effectively divested the Monetary Board of its sole and exclusive authority. In fine, respondent Judge Dumayas grossly ignored and arbitrarily encroached on the jurisdiction of the Monetary Board.
>
> xxx While there is no finding of bad faith or corruption on the part of respondent Judge Dumayas, the provision of law he violated

---

[37] *Rollo* (A.M. No. RTJ-21-015), pp. 369-381.

[38] *Id*. at 381.

is so plain and simple that all magistrates, by the exalted position that they occupy in the judiciary, are presumed to know. In this particular instance, his blatant disregard of a matter as basic and as important as jurisdiction cannot be countenanced.[39]

On the other hand, in its Report[40] dated 01 March 2018 in OCA IPI No. 15-4381-RTJ, the OCA absolved Judge Dumayas of the charges brought by Yuseco for gross ignorance of the law, gross incompetence, and gross abuse of authority. In recommending the dismissal of the complaint, the OCA ratiocinated:

"xxx respondent Judge Dumayas cannot be faulted when he issued the questioned Resolution dated 1 October 2014 and the Omnibus Order dated 26 January 2015 to conform to the rulings of the Court of Appeals and the High Court. The said orders are essential compliance with the directives of the appellate court to proceed with the liquidation of UDB with dispatch, which was also sustained by the High Court. If complainant Yuseco, Jr. is aggrieved thereby, he should have filed an appropriate legal remedy before the proper forum to rectify any perceived error committed by respondent Judge Dumayas. Sadly, there is a dearth of evidence to show that complainant Yuseco, Jr. sought judicial recourse from the subsequent orders of respondent Judge Dumayas."[41]

Ruling of the Court

A.M. No. RTJ-21-015
[Formerly OCA IPI No. 13-4162-RTJ]

Under Section 5(g) of Rule 135, every court shall have the inherent power to amend and control its processes and orders, so as to make them conformable to law and justice. This power includes the right to reverse itself, especially when, in its honest opinion, it has committed an error or mistake in judgment, and

---

[39] *Id*. at 378-379.

[40] *Rollo* (OCA IPI No. 15-4381-RTJ), pp. 177-184.

[41] *Id*. at 183.

that to adhere to its decision will cause injustice to a party-litigant.[42]

Corollarily, it is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[43]

Be that as it may, judges have the concomitant duty to be well-informed, to be familiar with the statutes and procedural rules at all times. When the law is so elementary, not to know it or to act as if one does not know it, constitutes gross ignorance of the law.[44]

In *Judge Marcos v. Hon. Cabrera-Faller*,[45] the Court reiterated that "when the inefficiency springs from failure to consider so basic and elemental a rule, law or principle in the discharge of duties, the judge is either insufferably incompetent and undeserving of the position she holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority." (Emphasis in the original.)

In this case, the Court agrees with the OCA's findings that Judge Dumayas' vacillation on a rather simple matter before him palpably shows his gross incompetence and gross ignorance of the law. To recall, Judge Dumayas originally gave due course to PDIC's Petition for Assistance in the Liquidation of UDB. His series of flip-flopping transpired after inexplicably

---

[42] *Tegimenta Chemical Philippines v. Oco*, 705 Phil. 57 (2013); G.R. No. 175369, 27 February 2013 [Per CJ Sereno].

[43] *See Salvador v. Judge Limsiaco, Jr.*, 519 Phil. 683 (2006); A.M. No. MTJ-06-1626, 17 March 2006 [Per J. Callejo, Sr.].

[44] *Marcos v. Judge Pamintuan*, 654 Phil. 626 (2011); A. M. No. RTJ-07-2062, 18 January 2011 [Per Curiam].

[45] 804 Phil. 45 (2017); A.M. No. RTJ-16-2472, 24 January 2017 [Per Curiam].

considering Yuseco's motion for reconsideration anchored on their misplaced reliance on the Banco Filipino case, which was decided under the RA No. 265 or the old Central Bank Act. It was an egregious mistake on Judge Dumayas' part.

Judge Dumayas indubitably exhibited gross ignorance of the law and prevailing jurisprudence by favoring the oppositors' argument based on an already superseded law and jurisprudence. It was his obligation to know that RA No. 265 had already been expressly repealed by RA No. 7653 as far back as 1993. Consequently, the ruling in *Banco Filipino,* which was decided under the old law, no longer applies. In the 2007 case of *Rural Bank of San Miguel, Inc. v. Monetary Board*,[46] the Court clarified:

> *Banco Filipino* and other cases petitioners cited were decided using Section 29 of the old law (RA 265):
>
> x x x x
>
> Thus in *Banco Filipino*, we ruled that an "examination [conducted] by the head of the appropriate supervising or examining department or his examiners or agents into the condition of the bank"[23] is necessary before the MB can order its closure.
>
> However, RA 265, including Section 29 thereof, was expressly repealed by RA 7653 which took effect in 1993. Resolution No. 105 was issued on January 21, 2000. Hence, petitioners' reliance on *Banco Filipino* which was decided under RA 265 was misplaced."

In addition, Judge Dumayas clearly ought to have known at the outset that the MB's power and authority to close banks, and liquidate them thereafter, when public interest so requires is an exercise of the police power of the State. The actions of the MB shall be final and executory and may not be restrained or set aside by the court except through a petition for *certiorari* on the ground that the action taken was in excess of jurisdiction, or with such grave abuse of discretion as to amount to lack or excess of jurisdiction.[47]

---

[46] 545 Phil. 62 (2007); G.R. No. 150886, 16 February 2007 [Per J. Corona].

[47] *See Apex Bancrights Holdings, Inc. v. Bangko Sentral ng Pilipinas*, 819 Phil. 127 (2017); G.R. No. 214866, 02 October 2017 [Per J. Perlas-Bernabe].

Considering the PDIC instituted liquidation proceedings, Judge Dumayas' actions should have been limited to the declaration of creditors and their rights, and the determination of their order of payment.[48] It was not within his authority to determine whether or not UDB could still be rehabilitated.

Judge Dumayas' flip-flopping on the issues brought before him is truly inexcusable. Even granting that he made an honest mistake at first, his subsequent actions, taken together, can only be considered as gross ignorance of the law. To be sure, Judge Dumayas, being a magistrate, is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles. For any matter — basic or simple, complicated or obscure — information can readily be obtained through some diligent research, a most basic tool to resolve the issues before him.

Under the doctrine of *res ipsa loquitur*, the Court may impose its disciplinary authority upon erring judges whose actuations, on their face, would show gross incompetence, ignorance of the law or misconduct.[49]

Section 8 (9), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies gross ignorance of the law or procedure as a serious charge. Meanwhile, Section 11(A) of the same Rule provides that a serious charge merits any of the following sanctions: (1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public

---

[48] *See In re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc.*, 540 Phil. 142 (2006); G.R. No. 158261, 18 December 2006 [Per J. Chico-Nazario]. *See also Barrameda vda. Ballesteros v. Rural Bunk of Canaman, Inc.*, 650 Phil. 476 (2010); G.R. No. 176260, 24 November 2010 [Per J. Mendoza].

[49] *Delos Santos v. Judge Mangino*, 435 Phil. 467 (2003); A.M. No. MTJ-03-1496, 10 July 2003 [Per CJ Davide, Jr.]. *See also Office of the Court Administrator v. Judge Pardo*, 576 Phil. 52 (2008); A.M. No. RTJ-08-2109, 30 April 2008 [Per J. Carpio-Morales].

office, including government-owned or controlled corporations; provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) Suspension from office without salary and other benefits for more than three (3), but not exceeding six (6), months; or (3) A fine of more than Php20,000.00, but not exceeding Php40,000.00.

In light of the Court's decision in A.M. No. RTJ-15-2435 dismissing Judge Dumayas from the service, the Court deems it appropriate in this case to impose on him a fine in the amount of Php40,000.00.

OCA IPI No. 15-4381-RTJ

Notably, while Yuseco based his complaint on the flip-flopping orders issued by Judge Dumayas, the impetus to file the case came only when Judge Dumayas issued Resolution dated 01 October 2014 and Omnibus Order dated 26 January 2015.

As the OCA found, Judge Dumayas cannot be faulted for issuing them, as they were issued to comply with the ruling of the CA in CA-GR SP No. 128241, as affirmed by this Court. However, this is only true with respect to the 26 January 2015 Omnibus Order. It cannot be said that the Resolution dated 01 October 2014 was issued in accordance with the CA Decision in CA-GR SP No. 128241 since the aforementioned CA Decision was only promulgated on 28 November 2014, or almost two months after Judge Dumayas issued his Resolution dated 01 October 2014.

On another point, this Court does not agree with the OCA that Yuseco failed to avail of all legal remedies before resorting to the filing of the administrative complaint. As oppositor, Yuseco filed a Joint Motion for Partial Reconsideration of the Resolution dated 01 October 2014. That motion was the first among the pending incidents which Judge Dumayas threshed out in the Omnibus Order dated 26 January 2015. With respect to the Omnibus Order dated 26 January 2015, Yuseco also moved for its reconsideration, with the additional prayer for the inhibition of Judge Dumayas. Acting on the motions, Judge Dumayas issued Resolution dated 16 February 2015.

The same notwithstanding, OCA IPI No. 15-4381-RTJ must still be dismissed for lack of merit, as Judge Dumayas acted well within his authority, without any taint of ignorance of the law or procedure, in issuing both Resolution dated 01 October 2014 and Omnibus Order dated 26 January 2015.

In fine, competence is a mark of a good judge. When a judge exhibits an utter lack of proficiency with the rules or with settled jurisprudence, he erodes the public's confidence in the competence of our courts.[50] This Court should, therefore, refrain from being lenient, when doing so would give the public the impression that incompetence is tolerated in the Judiciary.[51]

WHEREFORE, in light of the foregoing, the Court finds former Judge Winlove M. Dumayas of Branch 59, Regional Trial Court, Makati City **GUILTY** of gross ignorance of the law or procedure, in A.M. No. RTJ-21-015, and is **ORDERED** to pay a **FINE** of Forty Thousand Pesos (Php40,000.00), in view of his previous dismissal from the service.

The Court further resolves to **DISMISS** OCA IPI No. 15-4381-RTJ for lack of merit.

SO ORDERED.

Peralta, C. J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Inting, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.,* concur.

Carandang and *Lazaro-Javier, JJ.,* on official leave.

---

[50] *Marcos v. Judge Pamintuan, supra* at note 44.

[51] *Id*.

EN BANC

[G.R. No. 185806. November 17, 2020]

GENEROSO G. ABELLANOSA, CARMENCITA D. PINEDA, BERNADETTE R. LAIGO, MENELIO D. RUCAT, and DORIS A. SIAO, *Petitioners, v.* **COMMISSION ON AUDIT and NATIONAL HOUSING AUTHORITY,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DISALLOWANCE OF PERSONNEL INCENTIVES AND BENEFITS; RULES ON RETURN OF DISALLOWED AMOUNTS; PUBLIC OFFICERS LIABLE IN DISALLOWANCE CASES.— In *Madera, [v. COA],* the Court laid down the Rules on Return to be applied in cases involving disallowed personnel incentives and benefits: . . .

Based on the *Madera* Rules on Return, the public officers ordinarily held liable under disallowance cases involving personnel incentives and benefits are classified as either (1) an approving/authorizing officer or (2) a payee-recipient.

2. ID.; ID.; ID.; ID.; ID.; STATE AGENCY DOCTRINE; CIVIL LIABILITY OF APPROVING OR AUTHORIZING OFFICERS TO RETURN DISALLOWED AMOUNTS; A CLEAR SHOWING OF BAD FAITH, MALICE, OR GROSS NEGLIGENCE IS REQUIRED TO HOLD APPROVING/ AUTHORIZING OFFICERS SOLIDARILY LIABLE FOR DISALLOWED AMOUNTS.— When a public officer is to be held civilly liable in his or her capacity as an approving/ authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because the *civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure*. As a general rule, a public officer has in his or her favor the presumption that he or she has regularly performed his or her official duties and functions. For this reason, **Section 38 (1), Chapter 9, Book**

I of the Administrative Code of 1987 requires a clear showing of bad faith, malice, or gross negligence attending the performance of such duties and functions to hold approving/ authorizing officer civilly liable: . . .

The need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the State agency doctrine – a core concept in the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State; and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own.

Once the existence of bad faith, malice, or gross negligence . . . is clearly established, the liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code of 1987, . . .

With respect to "**every official or employee authorizing or making such payment**" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for amounts they may or may not have received, considering that the payee-recipients would not have received the disallowed amounts if it were not for the officers' errant discharge of their official duties and functions.

3. ID.; ID.; ID.; ID.; ID.; PRINCIPLE OF *SOLUTIO INDEBITI*; CIVIL LIABILITY OF A PAYEE-RECIPIENT TO RETURN DISALLOWED AMOUNTS; NOTWITHSTANDING THEIR GOOD FAITH, RECIPIENTS ARE CIVILLY LIABLE TO RETURN DISALLOWED AMOUNTS ON THE BASIS OF *SOLUTIO INDEBITI*.— [W]hen a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion

of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework. The reason for this is because *the civil liability of such payee-recipient — in contrast to an approving/authorizing officer — has no direct substantive relation to the performance of one's official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure*. As such, the payee recipient is treated as a debtor of the government whose civil liability is based on *solutio indebiti*, which is a distinct source of obligation.

When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential. Accordingly, previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per *Madera*, have now been abandoned. Thus, as it stands, **the general rule is that recipients, notwithstanding their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti***.

4. ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULES ON RETURN; *SOLUTIO INDEBITI* FINDS NO APPLICATION WHERE RECIPIENTS WERE NOT UNJUSTLY ENRICHED AT THE EXPENSE OF THE GOVERNMENT.— [T]he Court in *Madera* also recognized certain exceptions to the general rule on return. Bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another," *solutio indebiti* finds no application where recipients were not unjustly enriched at the expense of the government. Particularly, these pertain to disallowed personnel incentives and benefits which are either: (1) **genuinely given in consideration of services rendered** (*see* **Rule 2c** of the *Madera* Rules on Return); or (2) **excused by the Court to be returned on the basis of undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis** (*see* **Rule 2d** of the Madera Rules on Return).

5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES FOR THE APPLICATION OF THE EXCEPTION TO THE RULES ON RETURN.— As a supplement to the *Madera* Rules on

Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:

(*a*) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and

(*b*) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE AMOUNTS EXCUSED SHOULD BE LIMITED TO DISBURSEMENTS WITH FACTUAL AND LEGAL BASIS, BUT DISALLOWED ON ACCOUNT OF PROCEDURAL INFIRMITIES.— With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) – the *ponente* of *Madera* – aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood **to be limited to disbursements adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities**. As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (*e.g.*, matters of form, or inadequate documentation supplied/rectified later on).

7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE AMOUNTS EXCUSED MUST HAVE A CLEAR, DIRECT, AND REASONABLE CONNECTION TO THE ACTUAL PERFORMANCE OF OFFICIAL WORK AND FUNCTIONS.— Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered

as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, **there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions**. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.

8. ID.; ID.; ID.; ID.; ID.; ID.; THE EXISTENCE OF UNDUE PREJUDICE, SOCIAL JUSTICE CONSIDERATIONS, AND OTHER BONA FIDE EXCEPTIONS, MAY ALSO NEGATE THE STRICT APPLICATION OF *SOLUTIO INDEBITI*.— The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: **it must constitute a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return**. Ultimately, it is only in **highly exceptional circumstances, after taking into account all factors** (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.

9. ID.; ID.; ID.; ID.; ID.; DISLOCATION ALLOWANCES; RECIPIENTS ARE EXCUSED FROM RETURNING A DISALLOWED DISLOCATION ALLOWANCE THAT HAS NO LEGAL BASIS, BUT HAS A CLEAR, DIRECT, AND REASONABLE CONNECTION TO THE ACTUAL PERFORMANCE OF THEIR FUNCTIONS.— [T]he

incentive allowances disallowed herein are in the nature of **dislocation allowances**. Generally speaking, these allowances are meant as a recompense for the displacement of an employee who is assigned to work in remote or distant areas, the fact of which may entail personal and financial costs. . . .

. . .

. . . "[[T]he] incentive [allowance in this case] is not among the benefits recognized or authorized by law, and was thus properly disallowed." . . .

This notwithstanding, the Court is strongly impelled to excuse the return based on Rule 2d of the *Madera* rules. Indeed, were it not for the lack of proper legal basis, the benefits would have been excused under Rule 2c since it is established that the benefits have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions. . . . Accordingly, this highly exceptional scenario justifies the application of Rule 2d and hence, completely excuses petitioners' civil liability to return what they had received.

10. ID.; ID.; ID.; ID.; ID.; THE APPROVING/AUTHORIZING OFFICERS ARE SOLIDARILY LIABLE TO RETURN ONLY THE NET DISALLOWED AMOUNT; WHERE THE CIVIL LIABILITY FOR THE DISALLOWED AMOUNTS IS COMPLETELY EXCUSED, THE STATE MAY PURSUE OTHER APPROPRIATE ACTIONS IF SO WARRANTED. — According to *Madera*, approving/authorizing officers are solidarily liable to return **only the net disallowed amount**, upon a showing that they had performed their official duties and functions in bad faith, with malice or gross negligence. To recount, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by the recipients either under Rules 2c or 2d of the *Madera* Rules on Return.

Here, since the civil liability for the disallowed amounts had already been **completely** excused under Rule 2d of the *Madera* rules, there is nothing more to return. Nonetheless, the foregoing pronouncement on petitioners' civil liability notwithstanding, the State may, if so warranted, pursue any other appropriate administrative or criminal actions against any of them (including Abellanosa and Laigo) pursuant to existing laws and jurisprudence.

APPEARANCES OF COUNSEL

Gapuz (+) and Associates Law Offices for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is the motion[1] filed by petitioners Generoso G. Abellanosa (Abellanosa), Carmencita D. Pineda (Pineda), Bernadette R. Laigo (Laigo), Menelio D. Rucat (Rucat), and Doris A. Siao (Siao; collectively, petitioners) seeking reconsideration of the Decision[2] dated July 24, 2012 of the Court, which affirmed the Decision No. 2008-102[3] dated October 24, 2008 of the Commission on Audit (COA) upholding the disallowance of incentive allowances in the total amount of ₱401,284.39.

The Facts

On June 23, 1982, the Board of Directors of the National Housing Authority (NHA), acting pursuant to Presidential Decree No. (PD) 757,[4] issued Resolution No. 464[5] authorizing, *inter*

---

[1] Dated September 7, 2012; *rollo*, pp. 327-340.

[2] Id. at 310-323.

[3] Id. at 46-54. Signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

[4] See Section 10 of Presidential Decree No. 757, entitled as "CREATING THE NATIONAL HOUSING AUTHORITY AND DISSOLVING THE EXISTING HOUSING AGENCIES, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on July 31, 1975, which reads:

Section 10. Organizational Structure of the Authority. — The Board shall determine the organizational structure of the Authority in such manner as would best carry out its powers and functions and attain the objectives of this Decree.

The General Manager shall, subject to the approval of the Board, determine and appoint the subordinate officers, other personnel, and consultants, if

alia, the grant of incentive allowances equivalent to 20% of basic pay in favor of **project personnel who were assigned to regions outside their regular station**:

RESOLVED, that to encourage personnel particularly those in technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization, the grant of additional Incentive Benefits to project personnel, to wit:

A. **Personnel from one Region assigned to another Region** (e.g., Metro Manila to Visayas or Mindanao):

1. **Incentive Allowance equivalent to 20% of basic pay.**
2. Air fare (once a quarter).
3. Flight Insurance (Not more than ₱10.00 premium per flight)[.]
4. Staff housing.

x x x x[6] (emphases supplied)

The foregoing resolution was then implemented by NHA Memorandum Circular No. 331[7] dated August 17, 1984, reiterating the entitlement of project personnel to incentive allowances if they are "**[a]ssigned in a project other than [their] region of original placement**."[8]

The subject allowances were, however, discontinued in light of the enactment of Republic Act No. (RA) 6758,[9] otherwise

---

necessary, of the Authority: Provided, That the regular, professional and technical personnel of the Authority shall be exempt from the rules and regulations of the Wage and Position Classification Office and from the examination and/or eligibility requirement of the Civil Service Commission. **Subject to the approval of the Board, the General Manager shall likewise determine the rates of allowances, honoraria and such other additional compensation which the authority is hereby authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel.** (Emphasis supplied)

[5] *Rollo*, p. 67.

[6] Id.

[7] Id. at 89-92.

[8] Id. at 90.

[9] Entitled "An Act Prescribing a Revised Compensation and Classification System in the Government and for Other Purposes," approved on August 21, 1989.

known as the "Compensation and Position Classification Act of 1989."[10] To recount, Section 12 of RA 6758 integrated all allowances and benefits paid to government personnel as part of their standardized salaries, save for certain exceptions. Consequently, pursuant to Section 23[11] of RA 6758, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10 entitled "Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed under RA 6758 for Government-Owned and/or Controlled Corporations and Financial Institutions (GFIs)."

Eventually, the NHA resumed payment of the subject allowances after the Court, in its August 12, 1998 ruling in *De Jesus v. COA*,[12] struck down DBM CCC No. 10 for lack of publication. This prompted **petitioners, who were NHA employees stationed at Cagayan de Oro City but assigned to other areas in Mindanao**, to demand full back payment of incentive allowances for the period of February 1994 to December 1999, for which they were able to receive the partial sum of ₱808,645.90.[13] To further recover the unpaid balance amounting to ₱1,003,210.96,[14] petitioners filed claims for payment with the NHA head office. Uncertain about the legality of these claims, the NHA sought clarification from the Commission on Audit (COA).[15]

---

[10] See NHA Memorandum dated January 25, 1991; *rollo*, p. 200.

[11] Section 23. *Effectivity*. — This Act shall take effect July 1, 1989. **The DBM shall, within sixty (60) days after its approval, allocate all positions in their appropriate position titles and salary grades and prepare and issue the necessary guidelines to implement the same**. (Emphasis supplied)

[12] 355 Phil. 584 (1998).

[13] Broken down as follows: (1) Abellanosa, the amount of ₱204,407.80; (2) Laigo, the amount of ₱178,494.20; (3) Pineda, the amount of ₱171,216.30; (4) Rucat, the amount of ₱93,310.60; and (5) Siao, the amount of ₱161,217.00. (See *rollo*, p. 314.)

[14] See Memorandum dated August 21, 2001; id. at 216.

[15] See id. at 314-315.

Pending clarification, however, on September 19, 2001, Abellanosa, in his capacity as officer-in-charge of the NHA Iligan District Office, authorized the disbursement of the amount of **₱100,321.10**,[16] representing part of the aforementioned balance, with him and other petitioners as payees.[17]

On September 18, 2001, the COA issued an adverse opinion relative to the incentive allowances; thus, the NHA informed Abellanosa that the payment of the same should be discontinued for lack of legal basis.[18] This notwithstanding, on February 20, 2003, Abellanosa, once again, authorized the disbursement of the amount of **₱300,963.29** as incentive allowances, with him and other petitioners as payees.[19]

On January 24, 2005, the Legal and Adjudication Office of the COA **disallowed**[20] the foregoing disbursements in the total amount of ₱401,284.39[21] for lack of legal basis and held petitioners, including a certain Jerry R. Baviera (Baviera), liable in the following capacities: (a) Abellanosa, as approving officer and payee; (b) Laigo, as certifying officer and payee; and (c) Pineda, Rucat, Siao, and Baviera, each as payees.[22]

---

[16] See Disbursement Voucher No. 092604 dated September 19, 2001; id. at 70.

[17] See id. at 315.

[18] See NHA Memorandum dated September 25, 2001; not attached to the *rollo*. See also NHA Memorandum dated November 14, 2002; id. at 355-356.

[19] See Disbursement Voucher No. 023146 dated February 20, 2003; id. at 69. See also id. at 315.

[20] See Notice of Disallowance No. NHA-2005-001 (01 & 03) dated January 24, 2005 issued by Director IV Rogelio D. Tablang; id. at 64-65.

[21] Broken down as follows: (1) Abellanosa, the amount of ₱86,854.08; (2) Jerry R. Baviera, the amount of ₱54,956.80; (3) Laigo, the amount of ₱65,299.92; (4) Pineda, the amount of ₱102,847.75; (5) Rucat, the amount of ₱33,796.64; and (6) Siao, the amount of ₱57,529.20; see id.

[22] See id. at 316.

Aggrieved, petitioners appealed the notice of disallowance (ND) to the Adjudication and Settlement Board of the COA (ASB-COA), essentially arguing that RA 6758 does not apply to the NHA incentive allowances as the same were authorized prior to the passage of the said law, and pointing out that its implementing issuance, *i.e.*, DBM CCC No. 10, was already struck down by the Court.[23]

The Ruling of the ASB-COA

In a Decision[24] dated April 10, 2007, the ASB-COA **affirmed** the disallowance.[25] It held that the authorization and payment of the incentive allowances were illegal since the NHA's power to grant such amounts under PD 757 had already been repealed by Section 3[26] of PD 1597[27] and Section 16[28] of RA 6758.[29]

---

[23] See id. at 58 and 60.

[24] Id. at 55-63. Signed by Assistant Commissioners Elizabeth S. Zosa, Emma M. Espina, Carmela S. Perez, Jaime P. Naranjo, and Amorsonia B. Escarda.

[25] Id. at 62.

[26] Section 3. Repeal of Special Salary Laws and Regulations. — All laws, decrees, executive orders and other issuances or parts thereof, that exempt agencies from the coverage of the National Compensation and Position Classification System as established by P.D. No. 985 and P.D. No. 1285, or which authorize and fix position classification, salaries, pay rates/ranges or allowances for specified positions, to groups of officials and employees, or to agencies, that are inconsistent with the position classification or rates in the National Compensation and Position Classification Plan, are hereby repealed.

[27] Entitled, "FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT," approved on June 11, 1978.

[28] Section 16. *Repeal of Special Salary Laws and Regulations*. — All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

[29] See *rollo*, pp. 58-62.

Dissatisfied, petitioners appealed to the COA proper.

The Ruling of the COA Proper

In a Decision[30] dated October 24, 2008, the COA **affirmed** the ruling of the ASB-COA.[31] In the same vein, it held that the subject allowances granted by the NHA to its displaced employees lacked legal basis.[32]

Unperturbed, petitioners elevated the matter to the Court *via* a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, arguing, among others, that: (a) the grant of incentive allowances was well within the NHA's authority as provided by PD 757; (b) such authority was not repealed by PD 1597 and RA 6758; and (c) the disallowance of the same was unjust.[33]

Proceedings Before this Court

In a Decision[34] dated July 24, 2012 (July 24, 2012 Decision), the Court **affirmed** the ruling of the COA.[35] Finding no grave abuse of discretion on the latter's part, the Court ruled that the issuance of NHA Resolution No. 464 had no legal basis as Section 3 of PD 1597 had already repealed all laws permitting the grant of such allowances to government employees. Furthermore, it observed that the grant of the incentives also violated the rule on integration of allowances under Section 12 of RA 6758.[36]

On September 19, 2012, petitioners filed the instant motion[37] seeking reconsideration of the Court's July 24, 2012 Decision

---

[30] Id. at 46-54. Signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

[31] Id. at 53.

[32] See id. at 50-53.

[33] See id. at 22-40.

[34] Id. at 310-323.

[35] Id. at 321.

[36] See id. at 319-321.

[37] Dated September 7, 2012. Id. at 327-341.

on the main. At the onset, petitioners reiterated their previous arguments relative to the propriety of the subject allowances. Further, petitioners claimed that, even assuming that the incentives' disallowance was proper, they should not be held liable to refund the same since the amounts were received by them in good faith.

The Court's Ruling

The motion is partly meritorious.

Preliminarily, the Court observes that petitioner's contentions anent the propriety of the disallowance in this case are a mere rehash of its arguments already passed upon in the July 24, 2012 Decision. In their motion, petitioners reiterate that the payment of the incentive allowances were duly made in accordance with the NHA's authority under PD 757. However, as correctly held in the main Decision, the grant of such allowances are devoid of legal basis, considering that "Section 3 of [PD] 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees [inconsistent] x x x with the x x x National Compensation and Position Classification Plan"[38] of the government.

Likewise, the Court had aptly ruled that the NHA's power to grant such allowances had already been superseded by Section 12 of RA 6758, which integrated all allowances not specifically exempted into the standardized salary rates of government officials and employees. In this case, the incentive allowances granted under Resolution No. 464 do not fall under the following items provided under Section 12:

1. Representation and transportation allowances (RATA);
2. Clothing and laundry allowances;
3. Subsistence allowances of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;

[38] Id. at 319.

6. Allowance of foreign service personnel stationed abroad; and
7. **Such other additional compensation not otherwise specified herein as may be determined by the DBM**. (Emphasis supplied)

Hence, notwithstanding petitioners' claim that the incentive allowances were incidental to and necessary for the enforcement of the NHA's powers and duties, the same can no longer be granted in light of the express provisions of RA 6758 which, upon its effectivity, rationalized government salary rates in pursuit of similarly noteworthy objectives. As such, the propriety of their disallowance is upheld.

Nevertheless, in view of the recent landmark ruling in *Madera v. COA*[39] (Madera), the Court deems it proper to partially reconsider the July 24, 2012 Decision insofar as petitioners' civil liability to return the disallowed amounts is concerned.

In *Madera*, the Court laid down the Rules on Return to be applied in cases involving disallowed personnel incentives and benefits:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
    a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
    b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence

[39] See G.R. No. 244128, September 8, 2020.

are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return **only the net disallowed amount, which, as discussed herein, excludes amounts excused under the following sections 2c and 2d**.

c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.[40] (Emphases supplied)

Based on the *Madera* Rules on Return, the public officers ordinarily held liable under disallowance cases involving personnel incentives and benefits are classified as either (1) an approving/authorizing officer or (2) a payee-recipient. As will be herein explained, their civil liabilities to return are correspondingly governed by distinct legal nuances under two basic frameworks of law.

Civil liability to return of an approving/authorizing officer.

When a public officer is to be held civilly liable in his or her capacity as an approving/authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because *the civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure.* As a general rule, a public officer has in his or her favor the presumption that he or she has regularly performed his or her official duties and functions. For this reason, **Section 38 (1), Chapter 9, Book I of the Administrative Code of 1987** requires a clear showing of bad faith, malice, or gross

[40] See id.

negligence attending the performance of such duties and functions to hold approving/authorizing officer civilly liable:

> Section 38. *Liability of Superior Officers*. — (1) A public officer shall **not be civilly liable** for acts done in the performance of his official duties, unless there is a **clear showing of bad faith, malice or gross negligence**. (Emphases and underscoring supplied)

The need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the State agency doctrine — a core concept in the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State; and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own.[41]

Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code of 1987 is clearly established, the liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code of 1987, which states:

> Section 43. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of **said provisions** shall be illegal and **every official or employee authorizing or making such payment,**

---

[41] See Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Madera*.

or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received. (Emphases and underscoring supplied)

With respect to "**every official or employee authorizing or making such payment**" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for amounts they may or may not have received, considering that the payee-recipients would not have received the disallowed amounts if it were not for the officers' errant discharge of their official duties and functions.[42]

Civil liability to return of payee-recipient of personnel incentives/benefits.

On the other hand, when a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework. The reason for this is because *the civil liability of such payee-recipient — in contrast to an approving/authorizing officer — has no direct substantive relation to the performance of one's official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure*. As such, the payee-recipient is treated as a debtor of the government whose civil liability is based on *solutio indebiti*, which is a distinct source of obligation.

When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential.[43] Accordingly, previous rulings

---

[42] See id.

[43] Good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is "'forced' by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment." (See *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 [1993].)

absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per *Madera*, have now been abandoned. Thus, as it stands, **the general rule is that recipients, notwithstanding their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti***.

This notwithstanding, the Court in *Madera* also recognized certain exceptions to the general rule on return. Bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another,"[44] *solutio indebiti* finds no application where recipients were not unjustly enriched[45] at the expense of the government. Particularly, these pertain to disallowed personnel incentives and benefits which are either: (1) **genuinely given in consideration of services rendered** (*see* **Rule 2c** of the *Madera* Rules on Return); or (2) **excused by the Court to be returned on the basis of undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis** (*see* **Rule 2d** of the *Madera* Rules on Return).

As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:

(*a*) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and

(*b*) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the *Madera*

---

[44] *Ramie Textiles, Inc. v. Mathay, Sr.*, 178 Phil. 482, 487 (1979).

[45] See *Power Commercial and Industrial Corp. v. Court of Appeals*, 340 Phil. 705 (1997).

Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) — the *ponente* of *Madera* — aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood **to be limited to disbursements adequately supported by factual and legal basis,**[46] **but were nonetheless validly disallowed by the COA on account of procedural infirmities**. As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (*e.g.*, matters of form, or inadequate documentation supplied/rectified later on). As Justice Caguioa explains:[47]

> Under this rubric, **the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* <u>are limited to compensation authorized by law</u> including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (*e.g.*, honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers**.[48] These, to my mind, are the only forms of

---

[46] See Reflections of Justice Caguioa, pp. 2-7.

[47] Id. at 3-4.

[48] Citing Total Compensation Chart, Manual on Position Classification and Compensation, Chapter 3, p. 3-3.

compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery (by the government) which results from a disallowance (again, only because of procedural mistakes that might have been committed by approving and certifying officers) means the government is unjustly enriched (*i.e.*, it benefitted from services received from its employees without making payment for it).

The exception to Rule 2c was **not** intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received. (Emphases and underscoring supplied)

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, **there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions**. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.

The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: **it must**

constitute a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in **highly exceptional circumstances, after taking into account all factors** (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.

It is important to rein in Rules 2c and 2d of the *Madera* Rules on Return because their application has a direct bearing on the resulting amount to be returned by erring approving/authorizing officers civilly held liable under Section 38, in relation to Section 43, of the Administrative Code. In *Madera*, the Court explained that when recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration of services rendered, or for some other *bona fide* exception determined by the Court on a case to case basis, the erring approving/authorizing officers' solidary obligation for the disallowed amount is **net of the amounts excused to be returned by the recipients (net disallowed amount)**. The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, reduces the total amount to be returned to the extent corresponding to such exclusions. Accordingly, since there is a justified reason excusing return, the State should not be allowed a **double recovery** of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. Needless to say, even if the civil liability becomes limited in this sense, these erring public officers and those who have confederated and conspired with them[49] remain subject to the appropriate administrative

---

[49] As Section 16.1.4 of COA Circular No. 2009-006 provides:

161.4 Public officers and other persons who **confederated or conspired** in a transaction which is disadvantageous or prejudicial to the government shall be held liable **jointly and severally** with those who benefited therefrom. (Emphases supplied)

and criminal actions which may be separately and distinctly pursued against them.[50]

Application to the case at bar.

After a careful study of this case, the Court discerns that the incentive allowances disallowed herein are in the nature of **dislocation allowances**. Generally speaking, these allowances are meant as a recompense for the displacement of an employee who is assigned to work in remote or distant areas, the fact of which may entail personal and financial costs. As explicitly stated in NHA Resolution No. 464 and NHA Memorandum Circular No. 331, the subject allowances were given to select NHA personnel "from one [r]egion assigned to another [r]egion,"[51] particularly, those "**[a]ssigned in a project other than [their] region of original placement**."[52]

As the records further show, the incentive allowances equivalent to 20% of the basic pay were paid to petitioners for their deployment to other areas in Mindanao from their original station in Cagayan de Oro City (CDO).[53] In particular, petitioner Abellanosa was transferred from CDO to Zamboanga and Iligan, Laigo from CDO to Iligan, Pineda from CDO to Zamboanga and Iligan, Rucat from CDO to Iligan, and Siao from CDO to Iligan.[54] Aside from the NHA shouldering the direct costs appurtenant to their relocation (such as air fare, flight insurance and staff housing), **an incentive pay was given in order to convince and encourage these displaced employees, particularly those in the technical/professional category — as petitioners in this case**[55] **— to not only seek assignment**

---

[50] See *Madera v. COA*, supra note 39. See also Separate Concurring Opinion of Justice Perlas-Bernabe in *Madera*.

[51] *Rollo*, p. 67.

[52] Id. at 91.

[53] See id. at 330-335. See also id. at 126.

[54] See id. at 131-136.

[55] See id. at 128, 359, 363, 365, 367, 369, and 371.

but also to stay in these distant and perhaps, even hazardous areas wherein the NHA's mandate, *i.e.*, its housing programs, also needs to be implemented:

RESOLVED, **that to encourage personnel particularly those in the technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization**, the grant of additional Incentive Benefits to project personnel, to wit:

A. Personnel from one Region assigned to another Region (e.g., Metro Manila to Visayas or Mindanao):

1. Incentive Allowance equivalent to 20% of basic pay.
2. Air Fare (once a quarter).
3. Flight Insurance (Not more than P10.00 premium per flight).
4. Staff Housing.[56]

At this juncture, it is apt to mention that petitioners were actually relocated to different areas outside the region of their original station and that they had implemented the NHA's housing projects in the places they were reassigned to. In fact, in the July 24, 2012 Decision on the main, the Court even recognized "petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA."[57] Thus, by all accounts, there is no gainsaying that the disallowed incentives subject of this case have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions for which said incentives were intended as further compensation.

While the foregoing characterizations satisfy the second requisite of Rule 2c of the *Madera* Rules on Return as above-mentioned, the Court cannot excuse the return of these benefits on this ground since these benefits had no proper basis in law (first requisite). As keenly observed by Justice Caguioa during the deliberations, "[the] incentive [allowance in this case] is

---

[56] Id. at 67.

[57] Id. at 321.

not among the benefits recognized or authorized by law, and was thus properly disallowed."[58] The records are equally bereft of any indication that there is a similar "provision for dislocation or displacement allowance in domestic salary laws and regulations, x x x."[59] In fact, as held in the July 24, 2012 Decision, these displacement incentives were predicated on the NHA officials' mistaken notion that they are justified expenses incidental to and necessary for the enforcement of the NHA's powers and duties.[60] However, the Court held that "Section 3 of [PD] 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees [inconsistent] x x x with the x x x National Compensation and Position Classification Plan"[61] of the government. Consequently, the benefits were devoid of any legal basis and hence, cannot be considered as "genuinely given in consideration of services rendered."

This notwithstanding, the Court is strongly impelled to excuse the return based on Rule 2d of the *Madera* rules. Indeed, were it not for the lack of proper legal basis, the benefits would have been excused under Rule 2c since it is established that the benefits have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions. As above explained, the incentive allowance was meant to convince and encourage personnel belonging in the technical/professional category[62] to seek assignment in NHA projects implemented in other regions, and once there, to make them want to stay. The Court even recognized petitioners' professed dedication to their duties despite being sent to some hazardous areas in order to implement the housing programs

---

[58] See Concurring Opinion of Justice Caguioa, p. 10.

[59] Id.

[60] See *rollo*, p. 320.

[61] Id. at 319.

[62] See id. at 128, 359, 363, 365, 367, 369, and 371.

of the NHA. Surely, it would be clearly iniquitous to direct petitioners to return the incentives they had received way back in 2003[63] when these benefits were the material consideration for them to accede to their displacement and in so doing, risk their personal safety just so they could implement the NHA's mandate. Accordingly, this highly exceptional scenario justifies the application of Rule 2d and hence, completely excuses petitioners' civil liability to return what they had received.

It may not be amiss to point out that among the petitioners, two of them are approving/certifying officers. These are Laigo as certifying officer, and Abellanosa, as authorizing officer assigned as officer-in-charge of the NHA Iligan District Office. According to *Madera*, approving/authorizing officers are solidarily liable to return **only the net disallowed amount**, upon a showing that they had performed their official duties and functions in bad faith, with malice or gross negligence. To recount, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by the recipients either under Rules 2c or 2d of the *Madera* Rules on Return.

Here, since the civil liability for the disallowed amounts had already been **completely** excused under Rule 2d of the *Madera* rules, there is nothing more to return. Nonetheless, the foregoing pronouncement on petitioners' civil liability notwithstanding, the State may, if so warranted, pursue any other appropriate administrative or criminal actions against any of them (including Abellanosa and Laigo) pursuant to existing laws and jurisprudence.

WHEREFORE, the motion for reconsideration is **PARTLY GRANTED**. The Decision dated July 24, 2012 of the Court is hereby **AFFIRMED** with **MODIFICATION** in that petitioners Generoso P. Abellanosa, Carmencita D. Pineda, Bernadette R. Laigo, Menelio D. Rucat, and Doris A. Siao are **EXCUSED** from the civil liability to return the disallowed amount of

---

[63] See Disbursement Voucher No. 023146 dated February 20, 2003; id. at 69.

₱401,284.39 under Notice of Disallowance No. NHA-2005-001 (01 and 03) dated 24 January 2005, without prejudice to the finding of any administrative or criminal liability that any of them may have incurred under existing laws and jurisprudence.

SO ORDERED.

Peralta, C.J., Leonen, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, J., see concurring opinion.

Lazaro-Javier, J., on official leave.

CONCURRING OPINION

CAGUIOA, *J.*:

I agree that the 2012 Decision correctly upheld the Notice of Disallowance.[1] I write separately only to clarify the difference of Rule 2c and Rule 2d of the Rules on Return in *Madera v. COA*[2] *(Madera)* as the basis for absolving the petitioners from the liability of returning the disallowed amount of ₱401,284.39.

I take the opportunity to expound on the proper interpretation of "amounts x x x genuinely given in consideration of services rendered"[3] which are the proper exceptions to the general rule of Rule 2c — that payees must return disallowed amounts they respectively received, as originally conceived in *Madera*.

On September 8, 2020, the Court promulgated *Madera* which laid down the Rules on Return, thus:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

---

[1] Notice of Disallowance No. NHA-2005-001 (01 and 03) dated January 24, 2005.

[2] G.R. No. 244128, September 8, 2020.

[3] Id. at 36.

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

    a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of a family, are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

    b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

    c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

    d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.[4]

One of the concepts deliberately stated in broad strokes to await clarification on its proper interpretation in an appropriate case is "amounts x x x genuinely given **in consideration of services rendered**"[5] as an exception to Rule 2c.

Essence of recalibration by the Madera Rules

At its core, and as exhaustively discussed during the deliberations of *Madera*, its animating spirit is (1) the return to the proper recognition of the liability for unlawful expenditures

[4] Id. at 35-36.

[5] Emphasis supplied.

as a single solidary obligation of officers and payees,[6] and (2) an appeal to a more predictable application of *solutio indebiti* across disallowance cases.

This second premise is the foundational principle of Rule 2c of *Madera*. Recipients of properly disallowed amounts are liable to return the amounts they received under Section 43 of the Administrative Code of 1987 and the principle of *solutio indebiti*. On the other hand, excuse under Rule 2c was intended to apply only to "true" exceptions to *solutio indebiti* where a disallowance is upheld, but any procedural mistakes will not justify requiring payees to return what they respectfully received "in consideration of services rendered." Otherwise, unjust enrichment in favor of the Government would result.

In the same manner that contractors in disallowances involving infrastructure or service contracts are allowed to retain amounts representing reasonable compensation for services rendered on the basis of *quantum meruit*, excuse under Rule 2c was intended to recognize situations where payees may be allowed to retain the amounts they received if there is legal basis for the grant of the benefit, and they are entitled to said amounts for having rendered actual services for which the said benefits were given. To do otherwise would sanction unjust enrichment in favor of the Government, as services are rendered in its favor by payees who are not recompensed.

In *Madera*, the Court held:

> To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognized that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.[7]

---

[6] Such that retention by payees of the disallowed personnel benefits extinguishes the obligation of officers solidarily liable.

[7] Supra note 2, at 27. The citation for the quoted portion reads: See

The import of Rule 2c is it exempts payees from return when there are **legal and factual bases** to retain (*i.e.*, that the disallowed benefit was authorized by law, and the payee can show that he rendered actual service so as to be entitled to the said benefit).

To clarify, each Rule in *Madera* covers distinct situations:

1. Rule 2a provides for **no liability** for officers acting in good faith, in the regular performance of official functions, and with the diligence of a good father of a family.
2. Rule 2b treats of the **solidary liability** of officers who are clearly shown to have acted in bad faith, malice, or gross negligence.
3. Rule 2c provides the **general rule** that payees must return based on *solutio indebiti*, **EXCEPT** if the return will sanction unjust enrichment.
4. Rule 2d treats of situations that would otherwise be covered by the general rule in Rule 2c save for the unique circumstances in the case that would prompt the **exercise of the Court's discretion** to excuse the return on a case-to-case basis.

Under this rubric, the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (*e.g.*, honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by

---

Melchor v. Commission on Audit, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 714, citing *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 739. This case applies the same principle of unjust enrichment in cases where the contractor seeks payment to this case where reimbursement is sought from the official concerned; see also *Andres v. Commission on Audit*, G.R. No. 94476, September 26, 1991, 201 SCRA 780.

approving and certifying officers.[8] These, to my mind, are the only forms of compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery by the government resulting from a disallowance (again, only because of procedural mistakes that might have been committed by approving and certifying officers) means the government is unjustly enriched (*i.e.*, it benefitted from services received from its employees without making payment for it).

The exception to Rule 2c was not intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received.

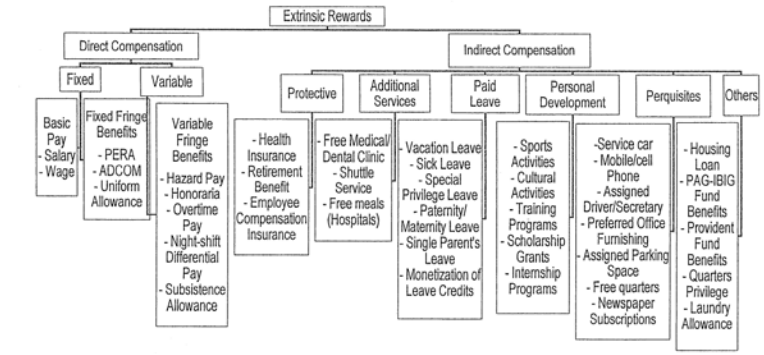
Under the Compensation and Position Classification System,[9] (CPCS) the Total Compensation Chart shows the following recognized benefits termed "extrinsic rewards":[10]

---

[8] See Manual on Position Classification and Compensation, Chapter 3, Total Compensation Chart, p. 3-3.

[9] See RA 6758; See generally, Joint Resolution No. 4, s. 2009 (JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES), Executive Order No. 201, s. 2016 (MODIFYING THE SALARY SCHEDULE FOR CIVILIAN GOVERNMENT PERSONNEL AND AUTHORIZING THE GRANT OF ADDITIONAL BENEFITS FOR BOTH CIVILIAN AND MILITARY AND UNIFORMED PERSONNEL), Joint Resolution No. 1, s. 2018 (JOINT RESOLUTION AUTHORIZING THE INCREASE IN BASE PAY OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES), and National Budget Circular No. 574 dated January 10, 2018 (IMPLEMENTATION OF THE INCREASE IN BASE PAY OF THE MILITARY AND UNIFORMED PERSONNEL (MUP) IN THE GOVERNMENT BEGINNING JANUARY 1, 2018, AND OTHER PROVISIONS OF CONGRESS JOINT RESOLUTION (JR) NO. 1, s. 2018).

[10] Manual on Position Classification and Compensation, supra note 8.



The General Provisions of the annual General Appropriations Acts (GAAs) also contain a chapter on Personnel Benefits which enumerates recognized personnel benefits and provides the requirements for their release.[11] Insofar as effective exchange of value is concerned, the direct compensation comprising of salaries and other authorized fringe benefits attached to an employee's position must be the extent of reasonable compensation for services rendered based on *quantum meruit*.

The exception to Rule 2c (or, in other words, benefits that the Court may allow payees to retain to prevent unjust enrichment on the part of the Government) must be limited to these existing and recognized benefits if we are to uphold the policy of Republic Act No. (RA) 6758 of standardization and maintaining compensation at reasonable levels in proportion to the national budget.

To my mind, a too expansive or broader reading of the exception in Rule 2c of "genuinely given in consideration of services rendered" will unwarrantedly dilute the import of Rule 2c because that qualification already generally applies to all allowances received by government personnel. The inclusion of the government employees' names in the agency's payroll and their rendition of regular or special services furnish the

[11] See, *e.g.*, RA 11465, 2020 GAA, Volume 1-B, Secs. 41 to 59, pp. 592-597.

factual basis for the release of the allowances in their favor. However, there must also be legal basis for the grant of the benefits in the first place.

This qualification — *i.e.*, that there must be legal basis for the grant of the benefits in the first place, was also pointed out by Justice Henri Jean Paul B. Inting in his Concurring Opinion in *Madera*. He cogently explained:

III

The general rule remains to be holding a payee liable for a disallowed amount he has received because it violates the principle against unjust enrichment. It is only in *truly exceptional circumstances*, as shown and established by the antecedent facts, that the Court may exonerate him from the obligation. The unique exempting circumstance present in the case at bar is the onslaught of the typhoon Yolanda, which justifies the Court's appreciation of social justice considerations.

Also, the *ponencia* now enunciates to henceforth consider certain employee benefits as *bona fide* exceptions to the application of *solutio indebiti*, inasmuch as these were paid in exchange of services rendered.

Parenthetically, that a disallowed payment happened to be in the nature of employee benefits to compensate service rendered should not diminish or extinguish altogether the recipients' obligation to return. In theory, these benefits were given to compensate services rendered. However, is the payment itself supported by law? This virtual exchange of value (disbursement *vis-a-vis* service rendered by civil servant) should not be the sole consideration in upholding the payment's validity.

For example, merit increases are given for exemplary performance in public office. However, there are cases where the increases are excessive and totally lacking of legal basis because they were computed using a rate or factor in excess of what was provided under the law. In the computation of separation pay, there may be instances where the law clearly provides for a 1.5 multiplier and, yet, an employee nonetheless receives separation pay computed with a different one (*e.g.*, 2.0 or 2.5, etc.), simply because the board of directors or the president took the initiative to reward their employees. Furthermore, there are also instances where employees are given allowances, which were intended to be consumed as part of the performance of their

official functions, but clearly in violation of the Salary Standardization Law.[12]

Madera not intended to supersede Section 12 of RA 6758

RA 6758 or the Compensation and Position Classification Act of 1989, enacted on August 21, 1989, advanced the policy of the State "to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."[13] To standardize salaries by integrating various allowances received by government officials and employees into the basic pay, RA 6758 provides:

> **Section 12.** ***Consolidation of Allowances and Compensation.*** — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Furthermore, RA 6758 reinforced the compliance with the CPCS by providing the repeal of Special Salary Laws.[14]

---

[12] Concurring Opinion in *Madera v. COA*, supra note 2, at 11-12.

[13] Sec. 2.

[14] **Section 16.** ***Repeal of Special Salary Laws and Regulations.*** — All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

Oft-repeated by the Court,[15] the policy of Section 12 was explained in the case of *Maritime Industry Authority v. Commission on Audit*:[16]

> The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These nonintegrated allowances are specifically identified in Section 12, to wit:
>
> 1. representation and transportation allowances;
>
> 2. clothing and laundry allowances;
>
> 3. subsistence allowance of marine officers and crew on board government vessels;
>
> 4. subsistence allowance of hospital personnel;
>
> 5. hazard pay; and
>
> 6. allowances of foreign service personnel stationed abroad.
>
> In addition to the nonintegrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.[17] (Citations omitted)

As stated, *Madera* was not intended and cannot supersede Section 12 of RA 6758. Rule 2c, as I understand and penned it, was never intended to authorize exceptions to Section 12 through jurisprudence. To interpret it broadly now would defeat the policy of standardization.

---

[15] See *Gubat Water District v. Commission on Audit*, G.R. No. 222054, October 1, 2019, pp. 9-10, *Solito Torcuator v. Commission on Audit*, G.R. No. 210631, March 12, 2019, p. 7, and *Balayan Water District v. Commission on Audit*, G.R. No. 229780, January 22, 2019, p. 5.

[16] G.R. No. 185812, January 13, 2015, 745 SCRA 300.

[17] Id. at 321-322.

Moreover, *Madera* was also not intended and cannot dispense with the DBM action under Section 12 or the requirement of Presidential approval or provision in a presidential issuance[18] for new and additional benefits granted to government personnel. The reason for this becomes more apparent when we consider that apart from the policy of RA 6758 to standardize salaries, the law specifically states that the CPCS to be established shall be guided by the principle that the total compensation provided for government personnel must be **maintained at a reasonable level** in proportion to the national budget.[19]

The exception in Rule 2c (*i.e.*, of allowing the payees to retain the amounts they received) only seeks to prevent unjust enrichment on the part of the Government. It was not intended to cover benefits not authorized by law or those in violation of Salary Standardization laws, particularly, Section 12 of RA 6758. Stated differently, Rule 2c cannot cover new or additional allowances that were granted without compliance with legal requirements, as is involved in this case. If it were so, the rules in *Madera* including the notion of "net disallowed amount" would become a shield for unscrupulous officers who would treat government funds with *largesse* that they are free to distribute to their employees in the form of unauthorized benefits. If all these benefits are considered "in consideration of services rendered," the Government will not be able to recover any amount under the *Madera* Rules.

This is precisely why these unauthorized benefits, while they can be loosely described as "given in consideration of services rendered," cannot be considered as the exception to *solutio indebiti* under Rule 2c as they are not benefits authorized by law. Any such allowances that the Court may allow payees to retain are excused under Rule 2d on a case-to-case basis, and not under Rule 2c.

---

[18] DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT, Administrative Order No. 103, August 31, 2004.

[19] Sec. 3 (c).

Application of Rule 2c

As an illustrative example of a situation covered by Rule 2c, the case of *Province of Camarines Sur v. COA*[20] *(CamSur)* is on point. In this case, Commission on Audit (COA) noted infirmities in the establishment of the extension classes and disallowed the payments made by the Province of Camarines Sur to the temporary teaching and non-teaching personnel of the Department of Education-Division of Camarines Sur hired to teach extension classes. The Court quoted therein the following violations noted by COA in its Notice of Disallowance:

1. The payments for allowances of locally funded teachers were in violation of the provisions of Section 272 of RA 7160 which explicitly provide that the proceeds of Special Education Fund shall be allocated for the operation and maintenance of public schools and DECS-DBM-DILG Joint Circular No. 01, s[.] of 1998 dated April 14, 1998, clarified under JC No. 01-A dated March 14, 2000 and JC No. 01-B dated June 25, 2001 which state that payments of salaries, authorized allowances and personnel-related benefits are only for hired teachers that handle new classes as extension of existing public elementary [or] secondary schools established and approved by DepEd;

2. The allowances was taken up in the Special Education Fund (SEF) books as "Donations" (878) instead of taking it up to the General Fund books[;]

3. No Memorandum of Agreement and Accomplishment Report attached[;]

4. The payments of payrolls on JEV Nos. 200-08-10-185(1-5) and 200-0810-188 were not approved by the Provincial Governor[;]

5. The Journal Entry of Payrolls on JEV Nos. 200-08-09-165(12), 200-08-185(1-5) and 200-08-10-188 were not approved by the Provincial Accountant[;]

6. The OBR on JEV No. 200-08-09-165(12) was not approved by the Provincial Budget Officer (PBO)[;]

---

[20] G.R. No. 227926, March 10, 2020.

7. There were no certifications coming from the Head Teachers that the rec[i]pient-teacher indeed served in a particular school at a given time[;]

8. There was no certification from the HRMO of the [p]rovince regarding the authenticity of each claim.[21]

Reflecting upon the ratiocination of an early draft that there is no competent evidence that actual services were rendered by the payees, I wrote to suggest that the principle of *solutio indebiti* be applied to require the return of the disallowed amounts not only from the approving and certifying officers, but also from the payees themselves. After much deliberation, and relying upon the views offered by Justices Marvic M.V.F. Leonen and Amy C. Lazaro-Javier, the Court accepted the certification offered by the petitioners to prove the rendition of actual services by payees. It sought to find a way to allow payees to retain the amounts they received despite the noted infirmities that led to the disallowance. The Court ultimately held:

Our concurrence with respondent on this point, notwithstanding, still we find that petitioner is ***not liable*** to pay for the disallowed funds.

Under the principle of *quantum meruit*, a person may recover a reasonable value for the thing he delivered or the service that he rendered. Literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.

Here, there is no question that the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur certified that locally-funded teachers actually rendered their services for calendar year 2008.

While COA argues that the joint certification of the PHRMO and SDS should be rejected, as it was impossible that they personally witnessed the daily attendance of all the personnel listed in the payroll, we find such imputation of malfeasance on the part of the concerned government officials to be warrantless, baseless and contrary to the

[21] Id. at 3.

presumption of regularity in the performance of official duties. We, therefore, give weight to the certification that the concerned personnel who received the questioned allowances actually rendered services for the period stated.

It is apparent, based on the rulings of the COA, COA-RO V, Auditor and ATL that, the disallowance was made not because no service was rendered by the concerned recipients. Rather, it was due to the failure of petitioners to comply with the mandatory requirements of DECS-DBM-DILG JCs particularly as to: (1) the prior approval of DECS (now DepEd) Secretary of the extension classes; and (2) the recommendation of the DECS Regional Director. It is only the third requirement, certification by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs, which petitioners were able to meet.

In light of the principles of *quantum meruit* and unjust enrichment, we Find that it would be the height of injustice if the personnel who rendered services for the period in question would be asked to return the honoraria and allowances they actually worked for, simply because the approving officers failed to comply with certain procedural requirements. By necessary implication, it would also be inequitable if the approving officers would be required to shoulder the return of the disallowed funds, even though such were given for actual service rendered.

x x x x

In summary, we find that a reversal of the COA Decision and Resolution is in Order as petitioner, through its approving officers, is not liable to refund the same. Actual services were rendered by the concerned recipients, teaching and non-teaching personnel alike, and no bad faith may be imputed on the approving officers.[22] (Emphasis in the original; underscoring supplied)

The situation in *CamSur* best exemplifies, in my view, the proper situation covered by Rule 2c's exception — in that were it not for the procedural missteps committed by the approving and certifying officers in the establishment of the extension classes and the recording and approval of the payments made, the amounts paid to the teachers should not have been disallowed.

[22] Id. at 12-15.

Notwithstanding the infirmities, the teachers' allowances should be retained by them because they were "genuinely given in consideration of services rendered," such that their recovery would result in the Government being unjustly enriched. The rendition of actual services justifies the retention of reasonable amounts received for the said services because this is a situation not covered by *solutio indebiti*.

This is the import of the exception in Rule 2c.

The situation in *CamSur* is different from cases involving new or additional benefits that are not direct compensation for actual services rendered. For these new and additional benefits, Rule 2c ordering the return on the basis of *solutio indebiti* applies.

As applied to this case

In this case, the "incentive allowance" equivalent to 20% of basic pay disallowed in this case is not covered by the exception in Rule 2c; hence, the excuse *pro hac vice* under Rule 2d.

This incentive is not among the benefits recognized or authorized by law, and was thus properly disallowed. Given that it is not a recognized benefit and the legal requirement for its grant was not complied with, the payment to the petitioners was undue. Their situation is covered by *solutio indebiti* and no unjust enrichment results in the Government recovering the payments made.

The Resolution describes the nature of the allowances in this case as being in the nature of **dislocation allowance**. In this regard, there appears no similar provision for dislocation or displacement allowance in domestic salary laws and regulations, whether for civilian personnel or military and uniformed personnel. Hence, the "additional incentive benefit" is clearly an additional benefit that could not have been validly granted without appropriate authorization either from the Department of Budget and Management or the Office of the President or through legislative issuances. Thus, the disallowance on that ground is valid, and the return is called for under Rule 2c.

The unanimous main decision which affirmed the COA decision assailed by petitioners already correctly held:

> Petitioners also argue that the alleged reopening of the settled, audited accounts of petitioners with respect to the incentive allowance paid was contrary to existing audit rules; and that the subsequent disallowance was an act tainted with injustice, fraud, and bad faith. While we commend petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA, the law must stand.
>
> In *Baybay Water District v. Commission on Audit*, this Court stated that public officers' erroneous application and enforcement of the law do not estop the government from making a subsequent correction of those errors. Where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties on account of an error committed by public officials in granting the benefit. Practice, without more — no matter how long continued — cannot give rise to any vested right if it is contrary to law.[23]

As the grant of this additional "incentive benefit" allowance violates Section 12 of RA 6758, the Court's resolution to excuse the return in this case could only be justified by "exempting circumstance[s]"[24] cited by the *ponencia*, which are properly included under Rule 2d, and not as an exception in Rule 2c.

Accordingly, I join the *ponencia* in resolving to **PARTLY GRANT** the Motion for Reconsideration.

---

[23] *Abellanosa v. Commission on Audit*, G.R. No. 185806, July 24, 2012, 677 SCRA 371, 383.

[24] To borrow the phrase of Justice Inting in his Concurring Opinion, supra note 2, at 11 in *Madera*.

EN BANC

[G.R. No. 194335. November 17, 2020]

SAMSON V. PANTALEON, EDUARDO A. TACOYO, JR., JESUS S. BAUTISTA AND MONICO C. AGUSTIN, *Petitioners, v.* **METRO MANILA DEVELOPMENT AUTHORITY,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; BATAS PAMBANSA BLG. 129; JURISDICTION; INJUNCTION; ACTIONS FOR INJUNCTION LIE WITHIN THE ORIGINAL JURISDICTION OF THE REGIONAL TRIAL COURT.— Actions for injunction lie within the original jurisdiction of the Regional Trial Court pursuant to Chapter II, Section 19 of Batas Pambansa Blg. 129, which grants the Regional Trial Courts original exclusive jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation."

2. ID.; PRINCIPLE OF HIERARCHY OF COURTS; THE PRINCIPLE OF JUDICIAL HIERARCHY REQUIRES THAT PETITIONS FOR WRITS OF *CERTIORARI*, PROHIBITION, AND *MANDAMUS* BE FILED WITH THE APPROPRIATE LOWER COURT.— Even if the Petition were to be treated as one for prohibition, the principle of hierarchy of courts requires that it be filed before the appropriate lower court. While this Court has concurrent jurisdiction with Regional Trial Courts and with the Court of Appeals to issue writs of *certiorari*, prohibition and *mandamus*, such concurrence does not accord to parties an absolute, unrestricted freedom of choice of court forum. The judicial hierarchy generally determines the appropriate forum for petitions for these writs.

The purpose for the doctrine requiring respect for the hierarchy of courts is to ensure that the different levels of the judiciary perform their designated roles in an effective and efficient manner. Observance of the rule frees up this Court of functions falling within the lower courts so that it can focus on its fundamental tasks under the Constitution.

3. ID.; ID.; EXCEPTIONS TO THE DOCTRINE OF HIERARCHY OF COURTS.— [T]his Court had, in the past, taken cognizance of improper petitions where "compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction."

. . .

In *The Diocese of Bacolod v. Commission on Elections*, this Court enumerated the following exceptions to the doctrine on hierarchy of courts: (1) those involving genuine issues of constitutionality that must be addressed at the most immediate time; (2) those where the issues are of transcendental importance, and the threat to fundamental constitutional rights are so great as to outweigh the necessity for prudence; (3) cases of first impression, where no jurisprudence yet exists that will guide the lower courts on such issues; (4) where the constitutional issues raised are better decided after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion; (5) where time is of the essence; (6) where the act being questioned was that of a constitutional body; (7) where there is no other plain, speedy, and adequate remedy in the ordinary course of law that could free petitioner from the injurious effects of respondents' acts in violation of their constitutional rights; and (8) the issues involve *public welfare*, the advancement of public policy, the broader interest of justice, or where the orders complained of are patent nullities, or where appeal can be considered as clearly an inappropriate remedy.

4. ID.; ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT'S EXPANDED POWER OF JUDICIAL REVIEW; THE TRANSCENDENTAL IMPORTANCE TO THE PUBLIC OF THE EXTENT OF THE POWERS OF THE METRO MANILA DEVELOPMENT AUTHORITY (MMDA) AND THE METRO MANILA COUNCIL DEMANDS THAT THE PROCEDURAL BARRIERS BE SET ASIDE AND THE MATTER BE SETTLED DEFINITELY.— The present petition seeks to enjoin the Metro Manila Development Authority from implementing its Resolution No. 10-16 and Circular No. 08, Series of 2010, on the ground that said issuances exceeded the authority given in its Charter and violated other laws.

Although captioned as a Petition for Injunction, it is actually one for Prohibition under this Court's expanded power to determine grave abuse of discretion committed by a government branch or instrumentality. The issue submitted is purely legal as it involves the scope of the powers and authority of the Metro Manila Development Authority and the Metro Manila Council.

Furthermore, public welfare and safety underlies the issuance of the regulatory measures. Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 8, Series of 2010 were issued due to the felt need to address the worsening traffic congestion in Metro Manila which, as determined by the respondent, was caused by the increasing volume of buses plying the major thoroughfares. The transcendental importance to the public of the extent of the powers of the Metro Manila Development Authority and the Metro Manila Council demands that we set aside procedural barriers and settle the matter definitely.

5. POLITICAL LAW; DELEGATION OF LEGISLATIVE POWER; ADMINISTRATIVE LAW; DELEGATED RULE-MAKING POWER TO ADMINISTRATIVE AGENCIES; REQUISITES THEREOF; COMPLETENESS TEST AND SUFFICIENT STANDARD TEST.— As a rule, legislative power is generally non-delegable. A recognized exception, however, is the grant of rule-making power to administrative agencies. "Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions." . . .

Thus, Congress may delegate the authority to promulgate rules to implement a law and effectuate its policies. To be permissible, however, the delegation must satisfy the *completeness* and *sufficient standard* tests.

> *. . . All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These requirements are denominated as the* ***completeness test*** *and the* ***sufficient standard test****.*

The delegation of legislative power is valid only if:

> . . . the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard –– the limits of which are sufficiently determinate and determinable –– to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.

In addition to the substantive requisites of the completeness test and the sufficient standard test, the Administrative Code of 1987 requires the filing of rules adopted by administrative agencies with the University of the Philippines Law Center.

Administrative rules and regulations that comply with the foregoing requisites have the force and effect of law.

6. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY; POWERS AND FUNCTIONS; THE MMDA IS EMPOWERED TO ISSUE RULES AND REGULATIONS AND RESOLUTIONS DEEMED NECESSARY BY IT TO CARRY OUT THE PURPOSES OF THE ACT, PRESCRIBE AND COLLECT SERVICE AND REGULATORY FEES AND IMPOSE AND COLLECT FINES AND PENALTIES.— Republic Act No. 7924 declared the Metropolitan Manila area as a "special development and administrative region." It placed the administration of "metro-wide" basic services affecting the region under the Metropolitan Manila Development Authority organized by virtue of Executive Order No. 392, Series of 1990, which replaced the Metro Manila Authority.

Under the law, the Metropolitan Manila Development Authority is tasked with responsibilities for the effective delivery of metro-wide services in Metropolitan Manila.

Section 2 of Republic Act No. 7924 specifically authorizes the Metropolitan Manila Development Authority to perform "*planning, monitoring and coordinative functions*, and in the process *exercise regulatory and supervisory authority* over the delivery of metro-wide services within Metro Manila without

diminution of the autonomy of the local government units concerning purely local matters."

The Metropolitan Manila Development Authority's scope of services covers those which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units comprising Metropolitan Manila.

Section 3 of Republic Act No. 7924 provides for metro-wide services to include "transport and traffic management," . . .

Meanwhile, Section 5 of Republic Act No. 7924 grants the Metropolitan Manila Development Authority the following powers and functions, among others: . . .

Through its governing and policy making body, the Metro Manila Council, the Metropolitan Manila Development Authority is empowered to *issue rules and regulations and resolutions deemed necessary by it to carry out the purposes of the Act, prescribe and collect service and regulatory fees, and impose and collect fines and penalties.*

7. ID.; ID.; ID.; ID.; VALIDITY OF MMDA RESOLUTION NO. 10-16 AND MEMORANDUM CIRCULAR NO. 08, SERIES OF 2010; THE CHALLENGED ISSUANCES WERE VALIDLY ISSUED PURSUANT TO THE MMDA'S POWER TO REGULATE TRAFFIC, SUCH AS REIMPOSING THE NUMBER CODING SCHEME ON PUBLIC UTILITY BUSES OPERATING ALONG THE MAJOR ROADS OF METRO MANILA.— What petitioners are questioning now is the re-implementation of the number coding scheme to public utility buses through Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 08, Series of 2010.

. . .

. . . Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 08, series of 2010 were validly issued pursuant to the Metro Manila Development Authority's power to regulate traffic under Republic Act No. 7924.

. . .

Metro Manila Development Authority Resolution No. 10-16, Series of 2010 and Metro Manila Development Authority Circular No. 08-Series of 2010 were issued within the limits of the powers granted to the Metropolitan Manila Development Authority. Its discretion to reimpose the number coding scheme on public utility buses was a reasonably appropriate response to the serious traffic problem pervading Metro Manila.

Courts generally give much weight to the competence, expertness, experience and informed judgment of the government agency officials charged with the implementation of the law.

8. ID.; ID.; ID.; ID.; ID.; STATUTORY CONSTRUCTION; R.A. NO. 7924 *VIS-À-VIS* EXECUTIVE ORDER NO. 202; THE CHALLENGED ISSUANCES DO NOT ENCROACH UPON THE REGULATORY POWERS OF THE LAND TRANSPORTATION AND FRANCHISING REGULATORY BOARD OVER PUBLIC UTILITY VEHICLES.— Contrary to petitioners' contention, the challenged issuances do not encroach upon the regulatory powers of the Land Transportation and Franchising Regulatory Board over public utility vehicles under Executive Order No. 202.

First, Republic Act No. 7924, otherwise known as the Metro Manila Development Authority Charter, is a special law and of later enactment than Executive Order No. 202 and the Public Service Law (Commonwealth Act No. 146, as amended). Hence, the provisions of Republic Act No. 7924 should prevail in case of conflicts.

Second, Section 5 of Executive Order No. 202 enumerates the powers and functions of the Land Transportation and Franchising Regulatory Board. The regulation of traffic is not included in the powers enumerated.

Moreover, there is no provision in the Executive Order that confers to the Land Transportation and Franchising Regulatory Board exclusive power or authority to regulate the operation of public utility buses. It even provides for the Land Transportation and Franchising Regulatory Board to "coordinate and cooperate with other government agencies and entities concerned with any aspect involving public land transportation services with the end in view of effecting continuing improvement of such services."

9. ID.; ID.; ID.; ID.; SINCE MMDA RESOLUTION NO. 10-16 WAS APPROVED BY THE METRO MANILA COUNCIL WHICH IS COMPOSED OF THE HEADS OF THE LOCAL GOVERNMENT UNITS (LGUs) COMPRISING METRO MANILA, THE SUPPORT OF THE LGUs FOR THE ASSAILED REIMPLEMENTATION OF THE NUMBER CODING SCHEME IS PRESUMED.— Section 20, of the Implementing Rules and Regulations of Republic Act No. 7924 describes the working relationship of the Metro Manila Development Authority with other national government agencies on transport and traffic: . . .

The jurisdiction of the Metro Manila Development Authority was conferred by law to address common problems involving basic services that transcended local boundaries. Particularly, it was tasked to coordinate these basic services so that their flow and distribution will be continuous. Pursuant to this function, the Metro Manila Development Authority through its Council is expressly authorized to issue binding rules and regulations pertaining to traffic management.

However, Section 2 of the Republic Act No. 7924 provides that the Metro Manila Development Authority's exercise of its powers is "without diminution of the autonomy of the local government units concerning purely local matters." This means that the Metro Manila Development Authority has the right to regulate traffic in Metro Manila, subject to the jurisdiction of local government units to enact ordinances aligned with the Metro Manila Development Authority's general policies.

Petitioners' contention that a legislative enactment from the respective local government units is necessary to uphold the implementation of the Metro Manila Development Authority issuances is untenable. Metro Manila Development Authority Resolution No. 10-16 was approved by the Metro Manila Council, which is composed of the heads of the local government units comprising Metro Manila. Hence, the local government units are presumed to support and adopt the reimplementation of the number coding scheme to public utility buses plying their respective territorial jurisdictions, unless they release an issuance to the contrary.

10. ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS; NOTICE AND HEARING ARE NOT ESSENTIAL WHEN AN

ADMINISTRATIVE AGENCY ACTS PURSUANT TO ITS RULE-MAKING POWER.— The challenged issuances are also not violative of the due process clause of the Constitution.

. . .

Contrary to petitioners' view, lack of prior hearing in this case does not violate procedural due process.

Notice and hearing are not essential when an administrative agency acts pursuant to its rule-making power. . . .

Section 16 (m) of Commonwealth Act No. 146, invoked by petitioners, is not applicable. . . .

Under this provision, prior notice and hearing is required when the revocation or modification of the certificate is dependent upon a past act or event which has to be established or ascertained in a judicial or quasi-judicial proceeding. In this case, the challenged issuances partake the nature of general rules and regulations promulgated to govern future conduct of persons.

11. ID.; ID.; ID.; ID.; MANDATORY PUBLICATION AND FILING OF ADMINISTRATIVE ISSUANCES WITH THE UNIVERSITY OF THE PHILIPPINES LAW CENTER – OFFICE OF THE NATIONAL ADMINISTRATIVE REGISTER; REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; COMPLIANCE WITH THE SAID REQUIREMENT IS PRESUMED IF NOT RAISED AS AN ISSUE; AN IMPLEMENTING GUIDELINE DOES NOT REQUIRE PRIOR PUBLICATION FOR ITS VALIDITY.— It must be stressed though that publication and filing of administrative issuances with the University of the Philippines Law Center – Office of the National Administrative Register are mandatory in order for these issuances to be effective.

Metro Manila Development Authority Resolution No. 10-16, Series of 2010 was published in the Manila Standard and The Manila Times on October 30, 2010, two (2) newspapers of general circulation in the Philippines. It does not appear from the records whether a copy of the Resolution was deposited with the Office of the National Administrative Register. However,

considering that petitioners do not raise this as an issue, we deem the issuances to have complied with this requirement pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.

Meanwhile, Metro Manila Development Authority Circular No. 8, Series of 2010 was issued by the Metro Manila Development Authority Chairman pursuant to its authority under Section 3 of Metro Manila Development Authority Regulation No. 96-005 to issue the necessary implementing guidelines. The Circular merely removed the public utility buses in the list of exempted vehicles in implementation of Metro Manila Development Authority Resolution No. 10-16. Thus, no prior publication and deposit with the Office of the National Administrative Register are needed for its validity.

12. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST; BUS OWNERS/OPERATORS OR FRANCHISES ARE THE REAL PARTIES IN INTEREST WHO CAN INVOKE ANY RIGHT INVADED UNDER THEIR FRANCHISE.— Petitioners are not the proper parties to question the validity of Metro Manila Development Authority Resolution No. 10-16, Series of 2010, which effectively revoked the exemption granted to public utility buses, because they were not parties to the Memorandum of Agreement executed between the Metro Manila Development Authority and the bus operators associations.

. . .

. . . [T]he bus owners/operators or franchisees, and not petitioners, are the real parties in interest who can invoke any right invaded under their franchise. A real party in interest in whose name an action must be prosecuted is one who is shown to be the present real owner of the right sought to be enforced.

13. POLITICAL LAW; CERTIFICATE OF PUBLIC CONVENIENCE; THE OPERATION OF PUBLIC UTILITY BUSES IS PARTICULARLY IMBUED WITH PUBLIC INTEREST, AND MAY BE SUBJECTED TO RESTRAINTS AND BURDENS TO SECURE THE COMFORT AND SAFETY OF MANY. — A certificate of public convenience is a mere privilege and does not confer upon its holder a property right. . . .

> The operation of public utility buses is particularly imbued with public interest, and as such may be subjected to restraints and burdens to secure the comfort and safety of many. . . .
>
> While this Court recognizes the possible adverse effect of the reimplementation of the number coding scheme to public utility buses on petitioners' source of livelihood, the promotion of the general welfare is of paramount importance. Hence, petitioners' individual interests must be subordinated to the benefit of the greater number.
>
> The validity of an administrative regulation must be upheld even if it will have the effect of restricting the use of one's property, provided the means adopted are reasonably necessary for the accomplishment of the purpose desired, not unduly oppressive, and in the interest of the general public.

APPEARANCES OF COUNSEL

Leynes Acejas and Associates Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Under Republic Act No. 7924, the Metro Manila Development Authority is vested with authority to regulate the delivery of metro-wide services in Metropolitan Manila. Included in this authority is the power to promulgate rules and regulations through its governing body, the Metro Manila Council. The Resolution re-implementing the number coding scheme to public utility buses is within the rule-making power granted to the Metropolitan Manila Development Authority or its Council to regulate traffic in Metropolitan Manila.

This is a Petition for Injunction (with Prayer for Temporary Restraining Order/*Status Quo Ante* Order and Permanent Injunction)[1] filed by public utility bus drivers, seeking this Court:

---

[1] *Rollo,* pp. 3-24.

(1) to enjoin the Metropolitan Manila Development Authority from enforcing against public utility buses its Unified Vehicular Volume Reduction Program, otherwise known as the number coding scheme, as embodied in Metro Manila Development Authority Resolution No. 10-16[2] and Metro Manila Development Authority Memorandum Circular No. 08, Series of 2010[3] (challenged issuances); and (2) to declare the nullity of these issuances.

Petitioners Samson V. Pantaleon, Eduardo A. Tacoyo, Jr., Jesus S. Bautista and Monico C. Agustin are bus drivers who have been plying along the routes between SM Fairview and Baclaran for three (3) to 27 years.[4]

Respondent Metropolitan Manila Development Authority is an administrative agency created by virtue of Republic Act No. 7924[5] to administer the affairs of Metropolitan Manila. Under Section 4 of Republic Act No. 7924, the Metro Manila Council[6] is the governing board and policy-making body of the Metropolitan Manila Development Authority.

---

[2] Re-implementing MMDA Regulation No. 96-005, as Amended Entitled "Unified Vehicular Volume Reduction Program Regulating the Operation of Certain Motor Vehicles on all Roads in Metropolitan Manila" for all Public Utility Buses on Experimental Basis.

[3] Amendment to Memorandum Circular No. 04, Series of 2010, Entitled "Revised Guidelines on the Issuance of Exemptions from the Unified Vehicular Volume Reduction Program (UVVRP) under MMDA Regulation No. 96-005, as Amended."

[4] Except for petitioner Agustin who plys the route Novaliches to Baclaran and vice versa. *Rollo*, pp. 3-29, Petition for Injunction.

[5] An Act Creating the Metropolitan Manila Development Authority, Defining its Powers and Functions, Providing Funding Therefor and for Other Purposes (March 1, 1995).

[6] The Metro Manila Council is composed of the mayors of the eight (8) cities and nine (9) municipalities enumerated in Section 1, the president of the Metro Manila Vice Mayors League, and the president of the Metro Manila Councilors League. The heads of the Department of Transportation and Communications, Department of Public Works and Highways, Department of Tourism, Department of Budget and Management, Housing and Urban Development Coordinating, and Philippine National Police, or their duly authorized representatives, shall attend meetings of the council as non-voting members. (Section 4, Rep. Act No. 7924)

To address the worsening traffic in Metro Manila, the Metro Manila Council issued Metro Manila Development Authority Regulation No. 96-005[7] on May 31, 1996 introducing the Unified Vehicular Volume Reduction Program (UVVRP), known as the number coding scheme.[8]

Under the said program, motor vehicles, including tricycles and motorcycles, both public and private, with license plates ending as shown below are prohibited from operating in all national, city, and municipal roads of Metropolitan Manila, during the corresponding days of the weeks from 7:00 a.m. to 7:00 p.m.:

Plate Ending No.	Day of the Week
1 and 2	Monday
3 and 4	Tuesday
5 and 6	Wednesday
7 and 8	Thursday
9 and 0	Friday[9]

Certain vehicles, however, were exempted from this scheme such as ambulances, fire trucks, government vehicles, and school buses.[10] The regulation provided for a ₱300.00 fine per violation.[11]

On July 15, 1996, the Metropolitan Manila Development Authority entered into a Memorandum of Agreement with the Integrated Metropolitan Bus Operators Association, Provincial Bus Operators Association of the Philippines, and Southern Luzon Bus Operators Association, partially exempting the buses of these operators associations from the number coding scheme. Under the Agreement, the Metropolitan Manila Development Authority has the power to recall the exemption in the event of

---

[7] *Rollo*, pp. 30-33.

[8] Id. at 63.

[9] MMDA Regulation No. 96-005 (1996), sec. 1.

[10] MMDA Regulation No. 96-005 (1996), sec. 2.

[11] MMDA Regulation No. 96-005 (1996), sec. 4.

rampant violation of traffic rules and regulations committed by bus drivers or accidents due to recklessness by bus drivers or negligence in the maintenance of their units.[12]

On October 15, 2010, the Metro Manila Council adopted Metro Manila Development Authority Resolution No. 10-16, Series of 2010[13] re-implementing the number coding scheme for all public utility buses, both provincial and city, on experimental basis "due to the recurring heavy traffic along the major thoroughfares of Metro Manila, partly brought about by rampant violation of traffic rules and regulations committed by bus drivers."[14] The Resolution was to be effective from November 15, 2010 to January 15, 2011.

On October 27, 2010, Metropolitan Manila Development Authority Chairman Francis N. Tolentino issued Memorandum Circular No. 08, Series of 2010[15] to take effect on November 15, 2010. The Circular amended Memorandum Circular No. 04, Series of 2010, entitled "Revised Guidelines on the Issuance of Exemptions from the Unified Vehicular Volume Reduction Program (UVVRP) under MMDA Regulation No. 96-005, Amended." The amendment pertained to the removal of public utility provincial and city buses from the list of vehicles exempted from the number coding scheme.

On November 22, 2010, petitioners filed before this Court their Petition for Injunction (with prayer for temporary restraining order/status quo ante order and permanent injunction). They assail the validity of MMDA Resolution No. 10-16, Series of 2010 and Memorandum Circular No. 08, Series of 2010. They pray that: (1) upon receipt of the Petition, a temporary restraining order or status quo ante order be issued enjoining the implementation of the number coding scheme for public utility buses as ordered in the challenged issuances; and (2) after notice

---

[12] *Rollo*, pp. 3, 64, and 44.

[13] Id. at 44.

[14] MMDA Resolution No. 10-16 (2010), whereas clauses.

[15] *Rollo*, pp. 41-42.

and hearing, an order be issued declaring the challenged issuances null and void and granting a permanent injunction stopping their implementation.[16]

Respondent filed their Comment[17] on February 10, 2011, while petitioners filed their Reply[18] on April 14, 2011.

Petitioners argue that Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 08, Series of 2010 contravene Republic Act No. 7924 as well as decisions[19] of this Court, which held that the Metro Manila Development Authority and Metro Manila Council have no legislative and police power, as all its functions are administrative in nature.[20] According to petitioners, the administrative issuances constitute an exercise of rule-making authority that is beyond the powers of the Metro Manila Council or the Chairman of the Metro Manila Development Authority.[21] They argue that a legislative enactment from the respective local government units is necessary to uphold the implementation of the challenged issuances.[22]

Even if the issuances were supported by the appropriate local ordinances, petitioners submit that they would still be invalid and ineffective because they unduly encroached upon the powers and prerogatives of the Land Transportation Franchising and Regulatory Board. Petitioners argue that under Section 16 of

---

[16] Id. at 23.

[17] Id. at 62-83.

[18] Id. at 99-106.

[19] *See MMDA v. Bel-Air Village Association, Inc.*, 385 Phil. 586 (2000) [Per J. Puno, First Division]; *MMDA v. Viron Transportation Co., Inc.*, 557 Phil. 121 (2007) [Per J. Carpio Morales, En Banc]; *MMDA v. Dante O. Garin*, 496 Phil. 82 (2005) [Per J. Chico-Nazario, Second Division]; and *MMDA v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*, 623 Phil. 236 (2009) [Per J. Bersamin, First Division].

[20] *Rollo*, p. 14.

[21] Id. at 7.

[22] Id. at 15.

Commonwealth Act No. 146,[23] it is the Land Transportation Franchising and Regulatory Board which has the exclusive jurisdiction to grant, amend, modify or revoke franchises issued to public utility operators. They also cite Section 5 (a) and (b) of Executive Order No. 202,[24] which provides:

SECTION 5. *Powers and Functions of the Land Transportation Franchising and Regulatory Board.* — The Board shall have the following powers and functions:

a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles in accordance with the public land transportation development plans and programs approved by the Department of Transportation and Communications;

b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public Land Transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefore; . . .

By reducing and limiting the number of buses operating within Metro Manila per day, they claim the challenged issuances added a restrictive condition on the existing franchises granted to public utility bus operators. Moreover, petitioners point out that there is no approval from the Department of Transportation and Communication of the number coding scheme, as required under Section 2 of Executive Order No. 712:[25]

---

[23] Public Service Act.

[24] Creating the Land Transportation Franchising and Regulatory Board (June 19, 1987).

[25] Directing the Immediate Review of Existing Orders, Rules and Regulations Issued by Local Government Units Concerning Public Transportation, Including the Grant of Franchises to Tricycles, Establishment and Operation of Transport Terminals, Authority to Issue Traffic Citation Tickets, and Unilateral Rerouting Schemes of Public Utility Vehicles, and for Other Purposes.

SECTION 2. Pending the review by the DOTC under Section 1 hereof of existing orders, rules and regulations issued by LGUs, the Department of the Interior and Local Government (DILG) shall, subject to existing laws, advise LGUs to suspend (1) the establishment and operations of new and existing transport terminals that charge fees and require compulsory use by public utility vehicles, (2) the enforcement of re-routing schemes that violate the authorized routes as provided for in the PUV franchises, (3) the issuance of new tricycle franchises while respecting those that have been issued already, (4) the increase in local fees and charges applicable to public transportation, and (5) the implementation of local programs, projects and ordinances that have impact on the cost of operations of public utility vehicles without first coordinating and getting the approval of the DOTC to ensure that these programs, projects and ordinances do not prejudice public interest by way of higher transport fares.

In addition, petitioners argue that existing franchises of public utility bus operators were effectively amended without notice and hearing as required by Commonwealth Act No. 146 and Article III, Section 1 of the 1987 Constitution. By decreasing the number of hours a bus was allowed to operate, the challenged issuances effectively reduced the number of work hours of petitioners, which resulted in lower take-home pay, and ultimately weakened their quality of life.[26] The issuances allegedly affected their right to work and earn a decent living without due process.

Meanwhile, respondent counters that: (1) its issuance and implementation of the number coding scheme within the thoroughfares of Metro Manila is a valid exercise of its power granted by Republic Act No. 7924; (2) petitioners are not the real parties-in-interest who can invoke Section 5, paragraphs (a) and (b) of Executive Order No. 202.[27] Moreover, insofar as

---

[26] *Rollo*, pp. 7-8.

[27] SECTION 5. *Powers and Functions of the Land Transportation Franchising and Regulatory Board*. — The Board shall have the following powers and functions:

a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles in accordance with the public land transportation development plans and programs approved by the Department of Transportation and Communications;

the State is concerned, it argues that a certificate of public convenience does not confer upon its holder a property right in the route covered by the certificate; and (3) petitioners' exercise of their right to work may be subject to reasonable regulations.

The issues for this Court's resolution are:

First, whether or not this Court has original jurisdiction to take cognizance of the Petition;

Second, whether or not the Metro Manila Development Authority or the Metro Manila Council has the legal authority to issue and implement Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 08, Series of 2010;

Third, whether or not the Metro Manila Development Authority issuances are invalid and ineffective for encroaching upon the powers of the Land Transportation Franchising and Regulatory Board under Section 16 of Commonwealth Act No. 146 or the Public Service Act and Section 5 (a) and (b) of Executive Order No. 202;

Fourth, whether or not petitioners are the real parties-in-interest who can properly invoke Section 5, paragraphs (a) and (b) of Executive Order No. 202; and

Lastly, whether or not the challenged issuances violate the due process clause of the 1987 Constitution for having been issued without proper notice and hearing.

I

Petitioners urge this Court to take cognizance of their Petition in view of the transcendental importance and urgency of the issues involved.[28] Petitioners contend that the peculiar

---

b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor[.]

[28] Id. at 9-11.

circumstances as well as the public interest involved sufficiently justify a departure from the rule on hierarchy of courts.[29] They add that respondent's illegal acts — such as the use of traffic citation tickets which was the subject of a permanent injunction;[30] and threats to impound public utility buses and to cancel their franchises should they violate the number coding scheme — affect their source of livelihood as bus drivers.[31] They also point out that the highly volatile situation between the transport officials and bus operators remain unresolved, hence their resort to this Court.

On the other hand, respondent submits that the Petition should be dismissed outright for lack of jurisdiction. It argues that an action for injunction is not among the proceedings originally cognizable by the Supreme Court.

We agree with respondent that it is the Regional Trial Court, not this Court, which has original jurisdiction over an action for injunction.[32]

Article VIII, Section 5 of the 1987 Constitution and Rule 56, Section 1 of the 1997 Rules of Civil Procedure, which enumerate the cases cognizable by this Court, do not include original actions for injunction:

Article VIII, 1987 Constitution

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over

---

[29] Id. at 8.

[30] *MMDA v. Pagkakaisa ng mga Samahan ng Tsuper at Operator Phil. (PISTON), et al.*, G.R. No. 185072. Currently pending before the Supreme Court.

[31] *Rollo*, p. 9.

[32] *Remotigue v. Osmeña, Jr.*, 129 Phil. 60 (1967) [Per Curiam, En Banc]; and *Madarang v. Santa Maria*, 37 Phil. 304 (1917) [Per J. Johnson, First Division].

> petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.
>
> RULE 56, 1997 Rules of Civil Procedure
>
> SECTION 1. *Original Cases Cognizable*. — Only petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court. (Emphasis in the original)

Actions for injunction lie within the original jurisdiction of the Regional Trial Court pursuant to Chapter II, Section 19 of Batas Pambansa Blg. 129, which grants the Regional Trial Courts original exclusive jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation."[33]

Even if the Petition were to be treated as one for prohibition, the principle of hierarchy of courts requires that it be filed before the appropriate lower court. While this Court has concurrent jurisdiction with Regional Trial Courts and with the Court of Appeals to issue writs of *certiorari*, prohibition and *mandamus*, such concurrence does not accord to parties an absolute, unrestricted freedom of choice of court forum. The judicial hierarchy generally determines the appropriate forum for petitions for these writs.[34]

The purpose for the doctrine requiring respect for the hierarchy of courts is to ensure that the different levels of the judiciary perform their designated roles in an effective and efficient

---

[33] *Philippine Amusement and Gaming Corp. v. Fontana Development Corporation*, 636 Phil. 472, 485 (2010) [Per J. Velasco, Jr., First Division]. *See also Subic Bay Metropolitan Authority v. Rodriguez*, 633 Phil. 196 (2010) [Per J. Carpio, Second Division]; and *Notre Dame De Lourdes Hospital v. Mallare-Phillips*, 274 Phil. 467 (1991) [Per J. Grino-Aquino, First Division].

[34] *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342 (2009) [Per J. Carpio, En Banc] citing *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529, 542-543 (2004) [Per C.J. Davide, Jr., En Banc].

manner.[35] Observance of the rule frees up this Court of functions falling within the lower courts so that it can focus on its fundamental tasks under the Constitution.[36] As this Court explained in *The Diocese of Bacolod v. Commission on Elections*:[37]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

---

[35] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[36] Id. citing *Bañez, Jr. v. Concepcion*, 693 Phil. 399 (2012) [Per J. Bersamin, First Division].

[37] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[38] (Citations omitted)

Nonetheless, this Court had, in the past, taken cognizance of improper petitions where "compelling reasons, or the nature and importance of the issues[39] raised, warrant the immediate exercise of its jurisdiction."[40]

For instance, in *United Claimants Association of NEA v. National Electrification Administration*,[41] the dismissal of more than 700 employees, or the entire plantilla of NEA, by virtue of a resolution issued by the NEA Board was considered *special and important reason* for this Court's cognizance of an action for injunction. In *Gamboa v. Finance Secretary Teves*,[42] the issue on the definition of the term "capital" in Article XII, Section 11 of the Constitution was deemed to have *far-reaching implications* for the national economy. Hence, this Court treated the petition for declaratory relief as one for *mandamus*.

In *Metropolitan Traffic Command West Traffic District v. Gonong*,[43] the issue of whether there was a law or ordinance authorizing the removal of the license plates of illegally parked vehicles was viewed important by this Court, urging it to address and resolve the question directly despite non-compliance with

---

[38] Id. at 329-330.

[39] *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342 (2009) [Per J. Carpio, En Banc]; and *Metropolitan Traffic Command West Traffic District v. Gonong*, 265 Phil. 472 (1990), [Per J. Cruz, En Banc].

[40] *Del Mar v. PAGCOR*, 400 Phil. 307 (2000) [Per J. Puno, En Banc] citing *Fortich v. Corona*, 359 Phil. 210 (1998) [Per J. Martinez, Second Division].

[41] 680 Phil. 506 (2012) [Per J. Velasco, Jr., En Banc].

[42] 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

[43] 265 Phil. 472 (1990) [Per J. Cruz, En Banc].

the rule on hierarchy of courts. Similarly, in *Agan Jr. v. PIATCO*,[44] the rule on hierarchy of courts was relaxed in view of the *transcendental importance* of the consolidated cases as they involved "the construction and operation of the country's premier international airport."[45] Moreover, the issues raised were considered of first impression and entailed the interpretation of key provisions of the Constitution, the Build Operate and Transfer Law and its Implementing Rules and Regulations.

Again, in *Province of Batangas v. Romulo*,[46] this Court resolved the petition for *certiorari*, prohibition and *mandamus* because the issue raised was purely legal, and because of the "transcendental importance'' of the case involving the application of the constitutional principle on local autonomy.

In *The Diocese of Bacolod v. Commission on Elections*,[47] this Court enumerated the following exceptions to the doctrine on hierarchy of courts: (1) those involving genuine issues of constitutionality that must be addressed at the most immediate time; (2) those where the issues are of transcendental importance, and the threat to fundamental constitutional rights are so great as to outweigh the necessity for prudence; (3) cases of first impression, where no jurisprudence yet exists that will guide the lower courts on such issues; (4) where the constitutional issues raised are better decided after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion; (5) where time is of the essence; (6) where the act being questioned was that of a constitutional body; (7) where there is no other plain, speedy, and adequate remedy in the ordinary course of law that could free petitioner from the injurious effects of respondents' acts in violation of their constitutional rights; and (8) the issues involve *public welfare*, the advancement of public policy, the

---

[44] 450 Phil. 744 (2003) [Per J. Puno, En Banc].

[45] Id. at 805.

[46] 473 Phil. 806 (2004) [Per J. Callejo, Sr., En Banc].

[47] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

broader interest of justice, or where the orders complained of are patent nullities, or where appeal can be considered as clearly an inappropriate remedy.

The present petition seeks to enjoin the Metro Manila Development Authority from implementing its Resolution No. 10-16 and Circular No. 08, Series of 2010, on the ground that said issuances exceeded the authority given in its Charter and violated other laws. Although captioned as a Petition for Injunction, it is actually one for Prohibition under this Court's expanded power to determine grave abuse of discretion committed by a government branch or instrumentality.[48] The issue submitted is purely legal as it involves the scope of the powers and authority of the Metro Manila Development Authority and the Metro Manila Council.

Furthermore, public welfare and safety underlies the issuance of the regulatory measures.[49] Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 8, Series of 2010 were issued due to the felt need to address the worsening traffic congestion in Metro Manila which, as determined by the respondent, was caused by the increasing volume of buses plying the major thoroughfares. The transcendental importance to the public of the extent of the powers of the Metro Manila Development Authority and the Metro Manila Council demands that we set aside procedural barriers and settle the matter definitely.

II

Petitioners are not questioning the validity of Metro Manila Development Authority Regulation No. 96-005[50] dated May

---

[48] CONST. Art. VIII, Sec. 1. *See Araullo v. Aquino III*, 752 Phil. 716 (2014 [Per J. Bersamin, En Banc].

[49] See *Luque v. Villegas*, 141 Phil. 108 (1969) [Per J. Sanchez, En Banc]; and *Calalang v. Williams*, 70 Phil. 726, 733 (1940) [Per J. Laurel, First Division].

[50] MMDA Regulation No. 96-005 expressly repealed MMDA Regulation Nos. 95-001 (Regulating the Volume of Private Vehicles in Identified Critical

31, 1996, the precursor of Metro Manila Development Authority Resolution No. 10-16, Series of 2010. Administrative issuances benefit from the same presumption of validity and constitutionality enjoyed by statutes.[51] Not being contested by petitioners, this Court deems Metro Manila Development Authority Regulation No. 96-005 to be valid and to have been passed according to the procedure prescribed by law.

Metro Manila Development Authority Regulation No. 96-005 is the administrative rule that originally imposed the number coding scheme on *all* motor vehicles plying all national, city and municipal roads in Metropolitan Manila, except for certain exempted vehicles listed in Section 2. Public utility buses were not included in the list of vehicles automatically exempted under Section 2 of MMDA Regulation No. 96-005, and hence, were initially covered by the number coding scheme.

However, by virtue of a Memorandum of Agreement between the Metro Manila Development Authority and bus operators associations, public utility buses were partially exempted from the number coding scheme, subject to the right of the former to recall the exemption under certain conditions. What petitioners are questioning now is the re-implementation of the number coding scheme to public utility buses through Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 08, Series of 2010.

Petitioners are not the proper parties to question the validity of Metro Manila Development Authority Resolution No. 10-16, Series of 2010, which effectively revoked the exemption granted to public utility buses, because they were not parties to the Memorandum of Agreement executed between the Metro

---

Thoroughfares in Metro Manila Through the Vehicular Volume Reduction Program) and 96-004 (Regulating the Volume of Public Motor Vehicles on All Roads in Metro Manila Through the Vehicular Volume Reduction Program).

[51] *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713-766 (2006) [Per J. Carpio, En Banc].

Manila Development Authority and the bus operators associations.

We hold that Metro Manila Development Authority Resolution No. 10-16 and Memorandum Circular No. 08, series of 2010 were validly issued pursuant to the Metro Manila Development Authority's power to regulate traffic under Republic Act No. 7924.

As a rule, legislative power is generally non-delegable. A recognized exception, however, is the grant of rule-making power to administrative agencies. "Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions."[52] In *Eastern Shipping Lines v. Philippine Overseas Employment Administration*:[53]

> The principle of non-delegation of powers is applicable to all the three major powers of the Government but is especially important in the case of the legislative power because of the many instances when its delegation is permitted. The occasions are rare when executive or judicial powers have to be delegated by the authorities to which they legally pertain. In the case of the legislative power, however, such occasions have become more and more frequent, if not necessary. This has led to the observation that the delegation of legislative power has become the rule and its non-delegation the exception.
>
> The reason is the increasing complexity of the task of government and the growing inability of the legislature to cope directly with the myriad problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.

---

[52] *Dagan v. Philippine Racing Commission*, 598 Phil. 406, 416 (2009) [Per J. Tinga, En Banc].

[53] 248 Phil. 762 (1988) [Per J. Cruz, First Division].

The reasons given above for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation."

With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.[54]

Thus, Congress may delegate the authority to promulgate rules to implement a law and effectuate its policies.[55] To be permissible, however, the delegation must satisfy the *completeness* and *sufficient standard* tests.[56]

In the face of the increasing complexity of modern life, delegation of legislative power to various specialized administrative agencies is allowed as an exception to this principle. Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies — the principal agencies tasked to execute laws in their specialized fields — the authority to promulgate rules and regulations to implement a given statute and effectuate its policies. *All that is required for the valid exercise of this power of subordinate legislation is that the regulation be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. These*

---

[54] Id. at 772-773.

[55] *The Conference of Maritime Manning Agencies, Inc. v. POEA*, 313 Phil. 592 (1995), [Per J. Davide, First Division].

[56] *Dagan v. Philippine Racing Commission*, 598 Phil. 406 (2009) [Per J. Tinga, En Banc].

requirements are denominated as the ***completeness test*** *and the* ***sufficient standard test***.[57] (Emphasis supplied)

The delegation of legislative power is valid only if:

> . . . the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard — the limits of which are sufficiently determinate and determinable — to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.[58]

In addition to the substantive requisites of the completeness test and the sufficient standard test, the Administrative Code of 1987 requires the filing of rules adopted by administrative agencies with the University of the Philippines Law Center.[59]

Administrative rules and regulations that comply with the foregoing requisites have the force and effect of law. *Victorias Milling Co., Inc. v. Social Security Commission*[60] held:

> Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law.[61]

---

[57] *Gerochi v. Department of Energy*, 554 Phil. 563, 584-585 (2007) [Per J. Nachura, En Banc].

[58] *Dagan v. Philippine Racing Commission*, 598 Phil. 406, 417 (2009) [Per J. Tinga, En Banc].

[59] *Quezon City PTCA Federation, Inc. v. Department of Education*, 781 Phil. 399 (2016) [Per J. Leonen, En Banc].

[60] 114 Phil. 555 [Per J. Barrera, En Banc].

[61] Id. at 558.

Republic Act No. 7924 declared the Metropolitan Manila[62] area as a "special development and administrative region."[63] It placed the administration of "metro-wide" basic services affecting the region under the Metropolitan Manila Development Authority organized by virtue of Executive Order No. 392, Series of 1990, which replaced the Metro Manila Authority.

Under the law, the Metropolitan Manila Development Authority is tasked with responsibilities for the effective delivery of metro-wide services in Metropolitan Manila.[64]

Section 2 of Republic Act No. 7924 specifically authorizes the Metropolitan Manila Development Authority to perform "*planning, monitoring and coordinative functions,* and in the process *exercise regulatory and supervisory authority* over the delivery of metro-wide services within Metro Manila without diminution of the autonomy of the local government units concerning purely local matters."

The Metropolitan Manila Development Authority's scope of services covers those which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units comprising Metropolitan Manila.[65]

Section 3 of Republic Act No. 7924 provides for metro-wide services to include "transport and traffic management," which, in turn, includes:

(1) the *formulation, coordination and monitoring of policies*, standards, programs and projects to rationalize the existing

---

[62] The Metropolitan Manila is a public corporation created under Presidential Decree No. 824, embracing the cities of Caloocan, Makati, Mandaluyong, Manila, Muntinlupa, Pasay, Pasig, Quezon, and the municipalities of Las Piñas, Malabon, Marikina, Navotas, Parañaque, Pateros, San Juan, Taguig, and Valenzuela.

[63] Republic Act No. 7924 (1994), sec. 1.

[64] Second Whereas Clause, Rules and Regulations Implementing Rep. Act No. 7924.

[65] Rules and Regulations Implementing Republic Act No. 7924, sec. 6.

transport operations, infrastructure requirements, *the use of thoroughfares*, and *promotion of safe and convenient movement of persons and goods*;

(2) provision for the mass transport system *and the institution of a system to regulate road users*; and

(3) administration and implementation of all traffic enforcement operations, traffic engineering services and traffic education programs, including the institution of a single ticketing system in Metropolitan Manila.

Meanwhile, Section 5 of Republic Act No. 7924 grants the Metropolitan Manila Development Authority the following powers and functions, among others:

(1) To set policies concerning traffic in Metropolitan Manila;

(2) To coordinate and regulate the implementation of all programs and projects concerning traffic management; and

(3) To install and administer a single-ticketing system, fix, impose and collect fines and penalties for all kinds of violations of traffic rules and regulations, and confiscate and suspend or revoke driver's licenses in the enforcement of such traffic laws and regulations.

Through its governing and policy making body, the Metro Manila Council, the Metropolitan Manila Development Authority is empowered to *issue rules and regulations and resolutions deemed necessary by it to carry out the purposes of the Act, prescribe and collect service and regulatory fees, and impose and collect fines and penalties*.[66]

Petitioners invoke the cases of *MMDA v. Bel-Air Village Association, Inc.*,[67] *MMDA v. Viron Transportation Co., Inc.*,[68] *MMDA v. Garin*[69] and *MMDA v. Trackworks Rail Transit*

---

[66] Republic Act No. 7924 (1994), sec. 6.

[67] 385 Phil. 586 (2000) [Per J. Puno, First Division].

[68] 557 Phil. 121 (2007) [Per J. Carpio-Morales, En Banc].

[69] 496 Phil. 82 (2005) [Per J. Chico-Nazario, Second Division].

Advertising, Vending and Promotions, Inc.,[70] to support its position that the Metropolitan Manila Development Authority has no authority to issue the resolution and circular.

These are not squarely on point with the present case.

In *MMDA v. Bel-Air Village Association, Inc.*,[71] the Metro Manila Development Authority claimed that it had the authority to open to public traffic a subdivision street owned by the Bel-Air Village Association, Inc. and to cause the demolition of the village's perimeter wall because it is an agent of the State endowed with police power in the delivery of basic services in Metro Manila. From this, the Metro Manila Development Authority argued that there was no need for the City of Makati to enact an ordinance opening Neptune Street to the public.

Tracing the legislative history of Republic Act No. 7924, this Court concluded that the Metro Manila Development Authority is neither a local government unit nor a public corporation endowed with legislative power, and, unlike its predecessor, the Metro Manila Commission, it had no power to enact ordinances for the welfare of the community. Thus, in the absence of an ordinance from the City of Makati, its own order to open the street was invalid. It is in the sense that this Court stated that Republic Act No. 7924 did not grant the Metro Manila Development Authority with police power, let alone legislative power, and that all its functions are administrative in nature.

In *MMDA v. Garin*,[72] respondent was issued a traffic violation receipt and his driver's license was confiscated for parking illegally along Gandara Street, Binondo, Manila. Garin questioned the validity of Section 5 (f) of Republic Act No. 7924. He contended that the provision violated the constitutional prohibition against undue delegation of legislative authority,

---

[70] 623 Phil. 236 (2009) [Per J. Bersamin, First Division].

[71] 385 Phil. 586 (2000) [Per J. Puno, First Division].

[72] 496 Phil. 82 (2005) [Per J. Chico-Nazario, Second Division].

because it allowed the Metro Manila Development Authority to fix and impose unspecified — and therefore unlimited — fines and other penalties on erring motorists.

While the case was pending in this Court, the Metro Manila Development Authority implemented Memorandum Circular No. 04, Series of 2004 proscribing traffic enforcers from confiscating licenses in traffic violations. Consequently, this Court held that, insofar as the absence of a *prima facie* case to enjoin the petitioner from confiscating drivers' licenses is concerned, the case was mooted by the implementation of MMDA Memorandum Circular No. 04, series of 2004.

However, citing *Bel-Air*, this Court further stated in *Garin* that the Metro Manila Development Authority has no legislative power and that Section 5 (f) merely grants it the duty *to enforce existing* traffic laws, rules and regulations enacted by the legislature or those agencies with delegated legislative powers. This *obiter dictum* in *Garin* is erroneous. It contravenes Section 5 of Republic Act No. 7924, which expressly grants the Metro Manila Development Authority or its Council the power to promulgate administrative rules and regulations in the implementation of its functions, which include traffic management and instituting a system for road users. Even *Bel Air* recognizes the delegated rule-making power of the Metro Manila Council.

MMDA v. Viron Transportation Co., Inc.[73] arose from the issuance of Executive Order No. 179 by former President Arroyo, declaring as operational the Greater Manila Transport System Project and designating the Metro Manila Development Authority as the implementing agency. The Project aimed to decongest traffic by eliminating the bus terminals located along major Metro Manila thoroughfares and providing common mass transport terminal facilities. Pursuant to the Executive Order, the Metro Manila Development Authority issued Resolution No. 03-07 expressing full support for the immediate implementation of the Project.

---

[73] 557 Phil. 121 (2007) [Per J. Carpio Morales, En Banc].

This Court held that although the President had the authority to order the implementation of the Project, the designation of the Metro Manila Development Authority as the implementing agency for the Project was *ultra vires* for lack of legal basis. This Court held that the Department of Transportation and Communication is, by law, the primary implementing and administrative entity in the promotion, development and regulation of networks of transportation. Hence, it is the Department of Transportation and Communication, not the Metro Manila Development Authority, which had the power to administer the transportation project. This Court further ruled that the elimination of bus terminals did not satisfy the standards of a valid police power measure and was contrary to the provisions of the Public Service Act.

In *MMDA v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*,[74] this Court held that MMDA had no power on its own to dismantle the billboards, signages and other advertising media installed by Trackworks in the structures of the Metro Rail Transit 3. Citing *Bel Air*, *Garin* and *Viron*, this Court reiterated that the Metro Manila Development Authority's powers were limited to formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924 granted it police power, let alone legislative power.

Bel Air, *Viron* and *Trackworks* involved the outright deprivation of private property under the pretext of traffic regulation and promotion of safe and convenient movement of motorists. On the other hand, *Garin* was mooted by supervening events.

In the present case, there is no outright deprivation of property but merely a restriction in the operation of public utility buses along the major roads of Metro Manila through the number coding scheme.

---

[74] 623 Phil. 236 (2009) [Per J. Bersamin, First Division].

Furthermore, Republic Act No. 7924 clearly confers upon the Metro Manila Development Authority, through the Metro Manila Council, the power to issue regulations that provide for a system to regulate traffic in the major thoroughfares of Metro Manila for the safety and convenience of the public.

III

Administrative rules and regulations, to be valid, must conform to the terms and standards prescribed by the law and carry its general policies into effect.[75] They must not contravene the Constitution and other laws.[76]

In *Smart Communications, Inc. v. National Telecommunications Commission*:[77]

> The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law. They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of,

---

[75] *Republic v. Drugmaker's Laboratories, Inc.*, 728 Phil. 480 (2014) [Per J. Perlas-Bernabe, Second Division]; *Eastern Assurance & Surety Corporation (EASCO) v. Land Transportation Franchising and Regulatory Board*, 459 Phil. 395 (2003) [Per J. Panganiban, Third Division]; and *Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles v. Home Development Mutual Fund*, 389 Phil. 296 (2000) [Per C.J. Davide, First Division].

[76] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, 543 Phil. 318 (2007) [Per J. Austria Martinez, Third Division].

[77] 456 Phil. 145 (2003) [Per J. Ynares-Santiago, First Division].

or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.[78]

Metro Manila Development Authority Resolution No. 10-16, Series of 2010 and Metro Manila Development Authority Circular No. 08, Series of 2010 were issued within the limits of the powers granted to the Metropolitan Manila Development Authority. Its discretion to reimpose the number coding scheme on public utility buses was a reasonably appropriate response to the serious traffic problem pervading Metro Manila.[79]

Courts generally give much weight to the competence, expertness, experience and informed judgment of the government agency officials charged with the implementation of the law.[80]

Contrary to petitioners' contention, the challenged issuances do not encroach upon the regulatory powers of the Land Transportation Franchising and Regulatory Board over public utility vehicles under Executive Order No. 202.

First, Republic Act No. 7924, otherwise known as the Metro Manila Development Authority Charter, is a special law and of later enactment than Executive Order No. 202 and the Public

---

[78] Id. at 156.

[79] The Whereas Clauses of MMDA Resolution No. 10-16 states:

WHEREAS, Sec. 5 (e) of RA No. 7924 mandates the MMDA to set policies concerning traffic in Metro Manila, and shall coordinate and regulate the implementation of all programs and projects concerning traffic management specifically pertaining to enforcement, engineering and education;

. . . .

WHEREAS, due to the recurring heavy traffic along the major thoroughfares of Metro Manila, partly brought about by rampant violation of traffic rules and regulations committed by bus drivers, the Metro Manila Council in session duly assembled, after due deliberation, recognized the urgent need to re-implement MMDA Regulation No. 96-005 for all public utility buses in Metro Manila on experimental basis.

[80] *Pest Management Association of the Philippines v. Fertilizer and Pesticide Authority*, 545 Phil. 258 (2007) [Per J. Austria-Martinez, Third Division] citing *Republic v. Sandiganbayan*, 355 Phil. 181 (1998) [Per J. Panganiban, First Division] citing in turn *Nestle Philippines, Inc. v. Court*

Service Law (Commonwealth Act No. 146, as amended). Hence, the provisions of Republic Act No. 7924 should prevail in case of conflicts.

Second, Section 5[81] of Executive Order No. 202 enumerates the powers and functions of the Land Transportation Franchising

---

of Appeals, 280 Phil. 548 (1991) [Per J. Feliciano, First Division]; and *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 140 Phil. 20 (1969) [Per J. Castro, En Banc].

[81] SECTION 5. *Powers and Functions of the Land Transportation Franchising and Regulatory Board*. — The Board shall have the following powers and functions:

a. To prescribe and regulate routes of service, economically viable capacities and zones or areas of operation of public land transportation services provided by motorized vehicles in accordance with the public land transportation development plans and programs approved by the Department of Transportation and Communications;

b. To issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public Land Transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefore;

c. To determine, prescribe and approve and periodically review and adjust, reasonable fares, rates and other related charges, relative to the operation of public land transportation services provided by motorized vehicles;

d. To issue preliminary or permanent injunctions, whether prohibitory or Mandatory, in all cases in which it has jurisdiction, and in which cases the pertinent provisions of the Rules of Court shall apply;

e. To punish for contempt of the Board, both direct and indirect, in accordance with the pertinent provisions of, and the penalties prescribe by, the Rules of Court;

f. To issue subpoena and subpoena duces tecum and to summon witnesses to appear in any proceedings of the Board, to administer oaths and affirmations;

g. To conduct investigations and hearings of complaints for violation of the public service laws on land transportation and of the Board's rules and regulations, orders, decisions and/or ruling and to impose fines and/or penalties for such violations;

h. To review motu proprio the decisions/actions of the Regional Franchising and Regulatory Office herein created;

and Regulatory Board. The regulation of traffic is not included in the powers enumerated.

Moreover, there is no provision in the Executive Order that confers to the Land Transportation Franchising and Regulatory Board exclusive power or authority to regulate the operation of public utility buses. It even provides for the Land Transportation Franchising and Regulatory Board to "coordinate and cooperate with other government agencies and entities concerned with any aspect involving public land transportation services with the end in view of effecting continuing improvement of such services."[82]

---

i. To promulgate rules and regulations governing proceedings before the Board and the Regional Franchising and Regulatory Office: Provided, That except with respect to paragraphs d, e, f and g hereof, the rules of procedure and evidence prevailing in the courts of law should not be controlling and it is the spirit and intention of said rules that the Board and the Regional Franchising and Regulatory Offices shall use every and all reasonable means to ascertain facts in its case speedily and objectively and without regard to technicalities of law and procedures, all in the interest of due process;

j. To fix, impose and collect, and periodically review and adjust, reasonable fees and other related charges for services rendered;

k. To formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities, standard of measurements and/or design, and rules and regulations requiring operators of any public land transportation service to equip, install and provide in their stations such devices, equipment facilities and operating procedures and techniques as may promote safety, protection, comfort and convenience to persons and property in their charges as well as the safety of persons and property within their areas of operations;

l. To coordinate and cooperate with other government agencies and entities concerned with any aspect involving public land transportation services with the end in view of effecting continuing improvement of such services; and

m. To perform such other functions and duties as may be provided by law, as may be necessary, or proper or incidental to the purposes and objectives of this Executive Order.

[82] Executive Order No. 292 (1987), sec. 5 (1).

Section 20 of the Implementing Rules and Regulations of Republic Act No. 7924 describes the working relationship of the Metro Manila Development Authority with other national government agencies on transport and traffic:

> Sec. 20. **Linkage with DOTC and DPWH on Transport and Traffic**. — The Authority shall undertake transport and traffic management and enforcement operation in Metropolitan Manila in coordination with the Department of Transportation and Communication. It shall formulate a uniform set of rules and regulations for traffic in Metropolitan Manila and establish the regulation thereof, in coordination with DOTC and DPWH and in consultation with all other agencies concerned.
>
> It shall deputize LGU traffic enforcers, duly licensed security guards, members of the Philippine National Police and non-governmental organizations and personnel of national agencies concerned to implement a single ticketing system.
>
> The Authority shall likewise formulate standards for route capacity and volume of motor vehicles for main thoroughfares.
>
> The Land Transportation Franchising and Regulatory Board of the DOTC shall evaluate, approve and issue franchise applications using the standards on route measured capacity, and prescribe and regulate transportation routes and areas of operation of public land transportation of public land transportation services, pursuant to the Metro Manila transport plan.
>
> The Land Transportation Office of the DOTC shall be responsible for the registration of motor vehicles and licensing of drivers, conductors and dealers.
>
> The DPWH may effect the gradual transfer of the operation, maintenance and improvement of the Traffic Engineering Center facilities to the Authority, subject to mutual agreement of the parties concerned. (Emphasis in the original)

The jurisdiction of the Metro Manila Development Authority was conferred by law to address common problems involving basic services that transcended local boundaries. Particularly, it was tasked to coordinate these basic services so that their flow and distribution will be continuous. Pursuant to this function, the Metro Manila Development Authority through its Council

is expressly authorized to issue binding rules and regulations pertaining to traffic management.

However, Section 2 of Republic Act No. 7924 provides that the Metro Manila Development Authority's exercise of its powers is "without diminution of the autonomy of the local government units concerning purely local matters." This means that the Metro Manila Development Authority has the right to regulate traffic in Metro Manila, subject to the jurisdiction of local government units to enact ordinances aligned with the Metro Manila Development Authority's general policies.

Petitioners' contention that a legislative enactment from the respective local government units is necessary to uphold the implementation of the Metro Manila Development Authority issuances is untenable. Metro Manila Development Authority Resolution No. 10-16 was approved by the Metro Manila Council, which is composed of the heads of the local government units comprising Metro Manila. Hence, the local government units are presumed to support and adopt the reimplementation of the number coding scheme to public utility buses plying their respective territorial jurisdictions, unless they release an issuance to the contrary.

IV

The challenged issuances are also not violative of the due process clause of the Constitution.

In *City of Manila v. Laguio, Jr.*,[83] this Court expounded on the aspects of the guaranty of due process of law as a limitation on the acts of government, *viz.*:

> This clause has been interpreted as imposing two separate limits on government, usually called "procedural due process" and "substantive due process."
>
> Procedural due process, as the phrase implies, refers to the procedures that the government must follow before it deprives a person

[83] 495 Phil. 289 (2005) [Per J. Tinga, En Banc].

of life, liberty, or property. Classic procedural due process issues are concerned with that kind of notice and what form of hearing the government must provide when it takes a particular action.

Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose.[84]

Contrary to petitioners' view, lack of prior hearing in this case does not violate procedural due process.[85]

Notice and hearing are not essential when an administrative agency acts pursuant to its rule-making power. In *Central Bank of the Philippines v. Cloribel*:[86]

Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. It is not essential to the validity of general rules or regulations promulgated to govern future conduct of a class of persons or enterprises, unless the law provides otherwise . . .

> It is also clear from the authorities that where the function of the administrative body is legislative, notice of hearing is not required by due process of law. See Oppenheimer,

---

[84] Id. at 311-312.

[85] *Taxicab Operators of Metro Manila v. Board of Transportation*, 202 Phil. 925 (1982) [Per J. Melencio-Herrera, En Banc].

[86] 150-A Phil. 86 (1972) [Per J. Concepcion, En Banc].

> Administrative Law, 2 Md. L.R. 185, 204, *supra*, where it is said: 'If the nature of the administrative agency is essentially legislative, the requirements of notice and hearing are not necessary. The validity of a rule of future action which affects a group, if vested rights of liberty or property are not involved, is not determined according to the same rules which apply in the case of the direct application of a policy to a specific individual.' . . . It is said in 73 C.J.S. Public Administrative Bodies and Procedure, sec. 130, pages 452 and 453: Aside from statute, the necessity of notice and hearing in an administrative proceeding depends on the character of the proceeding and the circumstances involved. In so far as generalization is possible in view of the great variety of administrative proceedings, it may be stated as a general rule that notice and hearing are not essential to the validity of administrative action where the administrative body acts in the exercise of executive, administrative, or legislative functions; but where a public administrative body acts in a judicial or quasi-judicial matter, and its acts are particular and immediate rather than general and prospective, the person whose rights or property may be affected by the action is entitled to notice and hearing.[87]

Section 16 (m) of Commonwealth Act No. 146, invoked by petitioners, is not applicable.

> SECTION 16. *Proceedings of the Commission, upon notice and hearing*. — The Commission shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:
>
> . . . .
>
> (m) To amend, modify or revoke at any time any certificate issued under the provisions of this Act, ***whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed.*** (Emphasis supplied)

Under this provision, prior notice and hearing is required when the revocation or modification of the certificate is dependent upon a past act or event which has to be established or ascertained

---

[87] Id. at 101-102.

in a judicial or quasi-judicial proceeding. In this case, the challenged issuances partake the nature of general rules and regulations promulgated to govern future conduct of persons.

It must be stressed though that publication and filing of administrative issuances with the University of the Philippines Law Center-Office of the National Administrative Register are mandatory in order for these issuances to be effective.[88]

Metro Manila Development Authority Resolution No. 10-16, Series of 2010 was published in the Manila Standard and The Manila Times on October 30, 2010,[89] two (2) newspapers of general circulation in the Philippines. It does not appear from the records whether a copy of the Resolution was deposited with the Office of the National Administrative Register. However, considering that petitioners do not raise this as an issue, we deem the issuances to have complied with this requirement pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.

Meanwhile, Metro Manila Development Authority Circular No. 8, Series of 2010 was issued by the Metro Manila Development Authority Chairman pursuant to its authority under Section 3 of Metro Manila Development Authority Regulation No. 96-005 to issue the necessary implementing guidelines. The Circular merely removed the public utility buses in the list of exempted vehicles in implementation of Metro Manila Development Authority Resolution No. 10-16. Thus, no prior publication and deposit with the Office of the National Administrative Register are needed for its validity.

Petitioners further argue that by limiting the number of buses operating within Metro Manila per day, the challenged issuances added a restrictive condition on the existing franchises granted to public utility bus operators and effectively reduced the number of work hours of petitioners, which resulted in lower take-home pay without due process of law.

---

[88] J. Leonen, Separate Opinion in *Cawad v. Abad*, 764 Phil. 705 (2015) [Per J. Peralta, En Banc].

[89] *Rollo*, p. 44.

Again, the bus owners/operators or franchisees, and not petitioners, are the real parties in interest who can invoke any right invaded under their franchise. A real party in interest in whose name an action must be prosecuted is one who is shown to be the present real owner of the right sought to be enforced.[90]

Nonetheless, even if we consider petitioners as the real parties in interest, their position cannot stand. A certificate of public convenience is a mere privilege and does not confer upon its holder a property right.[91] *Luque v. Villegas*[92] explained:

> Contending that they possess valid and subsisting certificates of public convenience, the petitioning public services aver that they acquired a vested right to operate their public utility vehicles to and from Manila as appearing in their said respective certificates of public convenience.
>
> Petitioner's argument pales on the face of the fact that the very nature of a certificate of public convenience is at cross purposes with the concept of vested rights. To this day, the accepted view, at least insofar as the State is concerned, is that "a certificate of public convenience constitutes neither a franchise nor a contract, confers no property right, and is a mere license or privilege." The holder of such certificate does not acquire a property right in the route covered thereby. Nor does it confer upon the holder any proprietary right or interest of franchise in the public highways. Revocation of this certificate deprives him of no vested right. Little reflection is necessary to show that the certificate of public convenience is granted with so many strings attached. New and additional burdens, alteration of the certificate, and even revocation or annulment thereof is reserved to the State.[93] (Citations omitted)

---

[90] *Shipside, Inc. v. Court of Appeals*, G.R. No. 143377, February 20, 2001, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/50282> [Per J. Melo, Third Division].

[91] *Pangasinan Transportation Co., Inc. v. The Public Service Commission*, 70 Phil. 221, 229 (1940) [Per J. Laurel, First Division].

[92] 141 Phil. 108 (1969) [Per J. Sanchez, En Banc].

[93] Id. at 119-120.

The operation of public utility buses is particularly imbued with public interest, and as such may be subjected to restraints and burdens to secure the comfort and safety of many.[94] This Court, in *Pangasinan Transportation Co., Inc. v. The Public Service Commission*,[95] held:

> The business of a common carrier holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation. When private property is "affected with a public interest it ceased to be *juris privati* only." When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discounting the use, but so long as he maintains the use he must submit to control. Indeed, this right of regulation is so far beyond question that it is well settled that the power of the state to exercise legislative control over public utilities may be exercised through boards of commissioners. This right of the state to regulate public utilities is founded upon the police power, and statutes for the control and regulation of utilities are a legitimate exercise thereof, for the protection of the public as well as of the utilities themselves. Such statutes are, therefore, not unconstitutional, either impairing the obligation of contracts, taking property without due process, or denying the equal protection of the laws, especially inasmuch as the question whether or not private property shall be devoted to a public and the consequent burdens assumed is ordinarily for the owner to decide; and if he voluntarily places his property in public service he cannot complain that it becomes subject to the regulatory powers of the state in the light of authorities which hold that a certificate of public convenience constitutes neither a franchise nor contract, confers no property right, and is mere license or privilege.[96] (Citations omitted)

While this Court recognizes the possible adverse effect of the reimplementation of the number coding scheme to public utility buses on petitioners' source of livelihood, the promotion

---

[94] *Luque v. Villegas*, 141 Phil. 108-126 (1969) [Per J. Sanchez, En Banc].

[95] 70 Phil. 221 (1940) [Per J. Laurel, First Division].

[96] Id. at 233-234.

of the general welfare is of paramount importance. Hence, petitioners' individual interests must be subordinated to the benefit of the greater number.[97]

The validity of an administrative regulation must be upheld even if it will have the effect of restricting the use of one's property, provided the means adopted are reasonably necessary for the accomplishment of the purpose desired, not unduly oppressive, and in the interest of the general public.[98]

In *Bautista v. Juinio*,[99] this Court sustained a letter of instruction prohibiting heavy and extra-heavy private vehicles from using public streets on weekends and holidays. The police regulatory measure was found to be reasonable to address the problem of energy conservation, and not violative of the due process clause of the Constitution. However, this Court annulled as *ultra vires* the administrative regulation calling for the impounding of the offending vehicles, for being without statutory justification.

In *Mirasol v. Department of Public Works and Highways*,[100] this Court upheld the validity of Administrative Order No. 1 issued by the Department of Public Works and Highways. In rejecting petitioners' position that the prohibition on the use of motorcycles in toll ways unduly deprived them of their right to travel, this Court held that public interest and safety require the imposition of certain restrictions on toll ways. The right to travel does not mean the right to choose any vehicle in traversing a toll way. Since the mode by which petitioners wish to travel

---

[97] *Legaspi v. Cebu City*, 723 Phil. 90 (2013) [Per J. Bersamin, En Banc]; and *Eastern Assurance & Surety Corp. v. LTFRB*, 459 Phil. 395 (2003) [Per J. Panganiban, Third Division].

[98] See *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713 (2006) [Per J. Carpio, En Banc]; and *U.S. v. Toribio*, 15 Phil. 85 (1910) [Per J. Carson, First Division].

[99] 212 Phil. 307 (1984) [Per J. Fernando, En Banc].

[100] 523 Phil. 713 (2006) [Per J. Carpio, En Banc].

pertains to the manner of using the toll way, it can be validly limited by regulation.

In this case, petitioners failed to present a clear factual foundation to rebut the presumption of validity of the challenged issuances. The arbitrariness, oppressiveness and unreasonableness of the implementation of the issuances have not been sufficiently shown. The buses driven by petitioners have not been totally banned or prohibited from plying the Metro Manila roads. However, as in private vehicles, the operation of public utility buses in Metro Manila was merely regulated with a view to curb traffic congestion.

WHEREFORE, the Petition for Injunction is **DISMISSED**.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

EN BANC

[G.R. No. 210905. November 17, 2020]

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), represented by its Administrator HANS LEO J. CACDAC, and OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA), represented by Administrator REBECCA J. CALZADO, *Petitioners*, *v.* **COMMISSION ON AUDIT, represented by Chairperson MA. GRACE M. PULIDO-TAN,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; BUDGET REFORM DECREE OF 1977 (P.D. NO. 1177); CONDITIONS FOR A VALID CONTRACT OF SERVICES WITH GOVERNMENT AGENCIES; A SERVICE FOR IMPLEMENTATION, MONITORING, OR OTHER REGULAR AND RECURRING ACTIVITY OF AN AGENCY CANNOT BE CONTRACTED OUT.— Section 64 [of P.D. No. 1177] specifically regulates government spending on contracting-out of services. The provision authorizes government agencies to enter into contracts with other public or private entities, subject to the following conditions: 1) the contract shall be subject to law and applicable guidelines approved by the President; 2) the contract shall be for a specific service which *cannot* be provided by the regular staff of the agency; 3) the contract must be for a specific duration of time; 4) the contract must set forth definite expected outputs; and 5) the contract cost shall not exceed the cost of the same service had it been performed by regular employees of the government. The provision also prohibits the contracting out of *implementing, monitoring, and other regular and recurring agency activities*. Therefore, to determine if a service may be properly contracted out by a government agency, the first step is to ascertain the nature of the service sought to be contracted out. If the service is an implementation, monitoring, or other regular and recurring activity of the agency, it cannot be contracted out.

2. ID.; ID.; ID.; OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA) *VIS-À-VIS* PHILIPPINE

OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); CONSIDERING THAT OWWA FUND COLLECTION IS PART OF POEA'S STATUTORY MANDATE, THE POEA AND ITS EMPLOYEES ARE NOT ENTITLED TO RECEIVE ALLOWANCES FOR SUCH A SERVICE.— [T]he Incentive Allowance was intended to be consideration for the integration of OWWA dues collection into the POEA contract processing system. However, as found by the COA audit team assigned at POEA, no POEA employees were involved in the task of collecting OWWA dues, since OWWA collection officers were deployed to POEA for the purpose. Nevertheless, it is clear from the foregoing excerpts that the Incentive Allowance was intended as consideration for the POEA's assistance in (or, to be more precise, facilitation of) OWWA dues collection. The Court agrees with the COA's assertion that POEA is not entitled to receive allowances for such a service, because the function of collecting contributions to the Welfare Fund lies precisely with POEA. . . .

. . .

As the successor agency of the Overseas Employment Development Board and the National Seamen Board, POEA clearly inherited these agencies' mandate under LOI No. 537 to collect contributions for the Welfare Fund. This mandate was not removed by P.D. Nos. 1694 and 1809, which both state that "[a]ll contributions to the Welfare and Training Fund collected pursuant to Letter of Instructions No. 537 issued on May 1, 1977 shall be transferred to the Welfund". In fact, it was only in 2016, upon the passage of R.A. No. 10801, did the Legislature explicitly authorize OWWA to collect for the OWWA Fund. Section 64 of P.D. No. 1177 does not even apply here, because the service sought to be contracted out is part of the purported contractor's statutory mandate.

Even assuming *arguendo* that R.A. No. 10801 explicitly empowered OWWA to collect contributions to the OWWA Fund, OWWA cannot contract out such function because it is not only a regular and recurring agency activity but also a core part of its statutory mandate. While POEA or its employees may be deputized by OWWA under Section 13 of R.A. No. 10801 to serve as collecting agents, POEA and its employees are not entitled to receive allowances for such deputation,

because, as the COA aptly observed, assistance and facilitation of Welfare Fund collection should still be considered part and parcel of POEA's mandate[.]

3. ID.; ID.; ID.; ID.; STATUTORY CONSTRUCTION; BEING COMPLEMENTARY ENTITIES WORKING TOGETHER TO PROMOTE, REGULATE, AND ENSURE THE WELFARE OF OVERSEAS FILIPINO WORKERS, OWWA AND POEA CHARTERS MUST BE CONSTRUED TOGETHER.— Being statutes relating to the same subject matter of overseas Filipino labor regulation and promotion, the charters of the OWWA and the POEA must be construed together. A close reading of the statutory functions of the two agencies evinces the legislature's intent to have POEA and OWWA as two separate but complementary entities working together to promote the government's overseas labor policies and ensure the welfare of OFWs; with POEA focusing on pre-employment matters such as recruitment, placement and labor contract management, and OWWA focusing on employment and post-employment matters such as insurance premiums, labor standards implementation, emergency assistance, reintegration, and social services.

The complementary nature of OWWA and POEA functions manifests itself in the provisions of the new OWWA charter, which institutionalizes the integration of OWWA dues collection into the POEA contract processing system and makes the POEA Administrator an ex officio member of the OWWA Board of Trustees. Under Section 18 of the OWWA charter, the POEA is required to ensure that overseas employment contracts contain a stipulation that "contributions to the OWWA Fund must be paid by the employers or principals, or in their default, by the recruitment/manning agency in the case of new hires."

4. ID.; ID.; COMPENSATION AND POSITION CLASSIFICATION ACT (R.A. NO. 6758); SALARY INTEGRATION RULE; ALL ALLOWANCES OF INCUMBENT GOVERNMENT EMPLOYEES ARE DEEMED INTEGRATED INTO THEIR STANDARD SALARY; EXCEPTIONS.— In 1989, Congress passed R.A. No. 6758, or the Compensation and Position Classification Act, which embodies the policy to "provide equal pay for substantially equal work and to base differences in pay upon substantive

differences in duties and responsibilities, and qualification requirements of the positions." . . .

. . .

The general rule . . . is that all allowances being received by incumbent government employees must be integrated into the standard salary. The exceptions to this rule are: 1) allowances granted for the purpose of defraying or reimbursing expenses incurred in the performance of their official functions, as enumerated in Section 12 of R.A. No. 6758; 2) existing additional compensation received before the effectivity of R.A. No. 6758; and 3) additional compensation as determined by the Department of Budget and Management or the President.

5. ID.; ID.; ID.; ID.; UNLESS THE RECIPIENTS PROVE THAT THEY ARE INCUMBENTS RECEIVING THE INCENTIVE ALLOWANCE EVEN PRIOR TO THE EFFECTIVITY OF R.A. NO. 6758, PAYMENT OF SUCH ALLOWANCE IS VIOLATIVE OF THE SALARY INTEGRATION RULE.— POEA and OWWA argue that the Incentive Allowance falls under the second exception because it was authorized in 1982 and has been paid to POEA employees ever since. However, in the 1999 case of *Phil. Int'l. Trading Corp. v. Commission on Audit* involving the disallowance of Car Plan program benefits for PITC officers, we held that the second exception only covers incumbents receiving non-integrated allowances as of 1989, when R.A. No. 6758 took effect, . . .

. . .

In the case at bar, while OWWA and POEA assert that the Allowance Incentive has been paid to the latter's employees since 1982, they failed to show that the officers and employees who received the payments covered by Notice of Disallowance No. 2005-015 were incumbents who have been receiving the Incentive Allowance since before the effectivity of R.A. No. 6758 in 1989. Moreover, the minutes of the November 21, 2001 OWWA Board meeting refer to the "proposed POEA incentive", the grant of which was debated lively. This can only mean that sometime between the approval of the 1982 Welfare Fund Resolution and the November 21, 2001 OWWA Board meeting, Incentive Allowance payments ceased or were stopped, otherwise

the OWWA Board would not have been denominated it as a "proposed incentive" and debated the merits of granting thereof. As such, the COA did not err in holding that the disallowed payments contravened the salary integration rules of R.A. No. 6758.

6. ID.; ID.; ID.; ID.; DOUBLE COMPENSATION; THE GRANT OF AN INCENTIVE ALLOWANCE WHICH IS DEEMED INTEGRATED INTO THE BASIC SALARY IS A VIOLATION OF THE RULE AGAINST DOUBLE COMPENSATION.— [T]he collection of OWWA dues is within the statutory mandate of POEA and is therefore part and parcel of the job description of its employees. Thus, under the applicable statutes and the basic law, any and all compensation or benefits received by the employees of POEA for the discharge of such function should be deemed integrated into their basic salaries, unless a law or executive issuance specifically states that they be given additional compensation therefor. POEA and OWWA have failed to demonstrate that the Incentive Allowance is authorized by any statute or executive pronouncement, apart from the erroneous 1982 OWWA Board Resolution No. 35. It is therefore clear that the payment of the Incentive Allowance violated the rule against double compensation.

7. ID.; ID.; ID.; ID.; REFUND OF DISALLOWED AMOUNTS; COA–DISALLOWED INCENTIVE ALLOWANCE PAYMENTS MUST BE RETURNED.— Upon a close perusal of the record, this Court sustains the COA proper. The incentive allowance payments must be returned, for the following reasons.

First, while there is no showing that the approving officers acted with malice or bad faith, they are nevertheless guilty of gross negligence for failing to realize that Welfare Fund collection is part of their agency's functions. As POEA officials, they are expected to be fully acquainted with the scope of the agency's mandate, which, as we have demonstrated, undoubtedly includes collecting for the Welfare Fund. Consequently, they should have not approved the incentive allowance payments because these amounted to unauthorized additional compensation for services rendered within the agency's legal mandate. The provisions of LOI No. 537 and E.O. No. 797 clearly and categorically state that Welfare Fund collection is a mandate

of the POEA, and the approving officers are duty bound to know and follow said laws.

Second, the sourcing of additional compensation from the Welfare Fund was prohibited as early as 1981. . . .

. . .

Third, assuming *arguendo* that the incentive allowance payments were sourced from OWWA's operating budget and not from the Welfare Fund itself, it was nevertheless illegal because the POEA officials and employees did not render any service which would entitle them to such payments.

8. ID.; ID.; ID.; ID.; ID.; GROSS NEGLIGENCE OF THE CERTIFYING AND APPROVING OFFICIALS RENDERS THEM LIABLE FOR THE TOTAL AMOUNT OF THE DISALLOWANCE.— In line with the *Madera* guidelines and in view of the pertinent factual findings and conclusions of this Court, *i.e.*, that the certifying and approving officials were grossly negligent in approving the Incentive Allowance despite the lack of legal and factual bases therefor, and that no services were rendered by the POEA officials and employees who received said Incentive Allowance, this Court affirms the COA's Decision to disallow the payment of Incentive Allowance in the total amount of ₱19,356,934.18, in accordance with the itemized breakdown of liabilities in Notice of Disallowance No. 2005-015, with the additional modification that the certifying and approving officials shall be liable for the total amount of the disallowance, there being no excusable amounts under paragraphs 2(b), 2(c), and 2(d) of the *Madera* guidelines.

D E C I S I O N

GAERLAN, *J.*:

This petition for *certiorari* under Rules 64 and 65 of the Rules of Court assails Decision No. 2011-023[1] dated January 31, 2011, and Decision No. 2013-226[2] dated December 23, 2013,

---

[1] *Rollo*, pp. 38-45; signed by Chairperson Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

[2] Id. at 47-52; signed by Chairperson Ma. Gracia M. Pulido-Tan (named

both rendered by the Commission on Audit (COA), which affirmed the disallowance of the payment of ₱19,356,934.18 from the daily collections of the Overseas Workers Welfare Administration (OWWA) as incentive allowance to the employees and officials of the Philippine Overseas Employment Administration (POEA).

The Facts

On May 1, 1977, the Welfare Fund for Overseas Workers (hereinafter referred to as the Welfare Fund) was created pursuant to Letter of Instruction (LOI) No. 537. The administration of the Fund was reorganized twice, through Presidential Decree (P.D.) Nos. 1694 and 1809, which were promulgated on May 1, 1980 and January 16, 1981, respectively. On January 30, 1987, the administration of the Fund was reorganized into the OWWA, pursuant to Executive Order (E.O.) No. 126.[3] In 2016, Republic Act (R.A.) No. 10801, or the Overseas Workers Welfare Administration Act, was enacted, further defining the mandate and powers of the agency. Under Sections 4 and 37 of R.A. No. 10801, the Welfare Fund was renamed into the OWWA Fund.

The POEA was created on May 1, 1982, pursuant to E.O. No. 797. It was designated as the "lead government agency responsible for the formulation and implementation of policies and programs for the overseas employment of Filipino workers."[4] Section 4 of E.O. No. 797 provides that the POEA "shall assume the functions of the Overseas Employment Development Board, the National Seamen Board, and the overseas employment functions of the Bureau of Employment Services; which shall absorb the applicable functions, appropriations, records, equipment, property, and such personnel as may be necessary of the abolished units x x x." On July 24, 1987, the POEA was reorganized pursuant to E.O. No. 247.

Ma. Grace M. Pulido-Tan in the Petition) and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

[3] EXECUTIVE ORDER NO. 126, Section 19.

[4] EXECUTIVE ORDER NO. 797, Section 1.

On November 10, 1982, the Welfare Fund's Board of Trustees enacted Resolution No. 35, which states:

> WHEREAS, Philippine Overseas Employment Administration (POEA) assists the WelfareFund in processing and determining the WelfareFund fees due from employers hiring Filipino workers for overseas employment as part of its processing procedures;
>
> WHEREAS, the POEA, in a resolution approved by its Governing Board has moved for the WelfareFund to pay POEA a service fee equivalent to 2% of total collections made by WelfareFund, for services rendered in the latter's behalf;
>
> RESOLVED, that WelfareFund pay to POEA a service fee of 2% of total collections made beginning in CY 1983, payable to POEA on a six (6)-month basis, the disposition of which shall be subject to the POEA Governing Board, provided, that report on the same shall be submitted to the Welfare Fund Board at the end of the calendar year.[5]

Subsequently, on November 21, 2001, the OWWA Board of Trustees approved the grant of an Incentive Allowance to POEA employees, equivalent to 1% of OWWA fees collected through the POEA.[6] The collection of OWWA fees through the POEA was further formalized in a Joint Memorandum dated November 28, 2001, issued by the Administrators of POEA and OWWA, which states in part that "[t]he payments of [Welfare Fund/ OWWA C]ontribution shall be made each time a contract is submitted to POEA for processing"; and that "[t]he POEA shall issue the Overseas Employment Certificate to a departing OFW [Overseas Filipino Worker] only after the presentation of a documentary proof of membership and/or payment of Welfare Fund/OWWA contribution."[7]

On May 31, 2004, the Office of the Chairperson of COA received a letter from an anonymous OWWA employee stating that 1% of all collections made by OWWA collection officers

---

[5] *Rollo*, p. 118.

[6] Id. at 119.

[7] Id. at 120.

assigned at the POEA were being paid to POEA officials and employees.[8] On the basis of said anonymous letter, POEA resident auditors investigated the alleged disbursements. On July 29, 2004, the POEA Audit Team Leader issued Audit Observation Memorandum No. 2004-018 holding that the payment of Incentive Allowance in the amount of ₱19,356,934.18 to the employees and officials of the POEA contravened Section 12 of R.A. No. 6758 and Article IX, Section 8 of the Constitution, and recommending that the Incentive Allowance payment be refunded or justified by the POEA. Pursuant to said Audit Observation Memorandum, the COA issued Notice of Disallowance No. 2005-015 on April 5, 2005.[9] The COA Legal and Adjudication Office-National (LAO-N) denied POEA's motion for reconsideration in a Decision[10] dated August 16, 2005, with the qualification that the disallowed payments need not be refunded. POEA filed a motion for reconsideration from the Decision of the COA LAO-N, which was denied in a Decision dated April 4, 2008.[11] POEA filed a Petition for Review before the COA proper, which the national audit body denied in the assailed Decision.

The Ruling of the Commission on Audit proper

The COA held that the grant of the Incentive Allowance to POEA employees for assisting in the collection of OWWA dues is improper for two reasons: first, the collection of OWWA fees forms part of POEA's mandate; and second, the grant of such an allowance violates Section 12 of R.A. No. 6758.

According to the COA, collecting dues from OFWs is part of POEA's official mandate, hence POEA employees are not entitled to additional compensation therefor. As POEA and OWWA were both "created for the promotion of the welfare and protection of the rights of OFWs,"[12] the statutes which created

[8] Id. at 38-39. COA-proper decision.

[9] Id. at 60.

[10] Id. at 69-73; signed by Director IV Khem N. Inok.

[11] Id. at 101-105; signed by Director III Roy L. Ursal.

[12] Id. at 42. COA-proper decision.

the OWWA and the POEA are *in pari materia* and should be read and construed together and harmonized as if they were the same law. According to the national audit body, while the statutory mandates of POEA and OWWA do not explicitly require the former to assist in OWWA recruitment and fee collection, such function is implicit from the POEA's power under Section 3 (n) of E.O. No. 247 to enter into joint projects with other relevant government entities in the pursuit of its objectives of promoting OFW welfare; and from OWWA's power under Section 4 (a) and (b) of P.D. No. 1694 to formulate and implement programs and enter into agreements and contracts to attain its objectives and purposes.[13] The joint policy on making POEA exit clearances contingent upon payment of OWWA membership fees as laid down in the November 28, 2001 memorandum issued by the administrators of the two agencies is germane to the mandates and objectives of both agencies, and further evinces the shared responsibility of both agencies in promoting the OFW welfare; hence, POEA cannot disown such functions as a justification for drawing Incentive Allowances for its employees from the Welfare Fund.

The COA also rejected POEA's argument that the incentive payments were justified under Section 64 of P.D. No. 1177, which authorizes government agencies to enter into service contracts with other public entities when the regular staff cannot provide such services. Assuming without conceding that collecting OWWA fees is not part of POEA's mandate, OWWA cannot outsource its fee collection function to POEA because there is no showing that the former's regular staff cannot do so. It was even proven by the POEA Audit Team that OWWA officers were stationed at the POEA to discharge that very function,[14] which means that the incentive payments were being made to POEA employees without rendering any service for OWWA.

---

[13] Id. at 43.

[14] Id. at 44.

The COA further held that the payment of the Incentive Allowance violated Section 12 of R.A. No. 6758, which requires that all allowances paid to regular employees of the government must be integrated into the statutory salary rate. There is no showing that the Incentive Allowance was integrated into the regular pay of POEA employees. Even assuming that such allowance came under the grandfather clause of Section 12,[15] it was nevertheless explicitly prohibited by MOB-MOF-COA Joint Circular No. 9-81, Item No. 4.5 which prohibits the use of trust receipt funds for payment of additional compensation, including incentive pay, to employees. Furthermore, the purported letter of then Budget Minister Manuel Alba cited by the POEA, which treats the Incentive Allowance payments as funds in the category of Trust Receipts, contravenes the abolition of all existing special and fiduciary funds under P.D. No. 711.

Finally, the national audit body affirmed the holding of its Legal and Adjudication Office-National that the Fund is in the nature of a private fund held in trust by OWWA for the OFWs who contribute thereto; and as such, proceeds from the Fund cannot be used to pay the questioned Incentive Allowance, following the ruling in *Social Security System v. Commission on Audit*.[16] The COA *en banc* likewise rejected the applicability of the *Blaquera*[17] doctrine and ordered that the POEA employees

---

[15] Section 12 states *inter alia* that "representation and transportation allowances, clothing and laundry allowances, subsistence allowance of marine officers and crew on board government vessels and hospital personnel, hazard pay, allowances of foreign service personnel stationed abroad, and such other additional compensation not otherwise specified herein as may be determined by the [Department of Budget and Management]" which are not integrated into the standardized salary rate but "being received by incumbents only as of July 1, 1989" "shall continue to be authorized." This effectively "grandfathers" in all such allowances received by incumbent employees as of July 1, 1989 and allows their continued payment even if they are not integrated into the standardized salary rate.

[16] 433 Phil. 946 (2002).

[17] *Blaquera v. Alcala*, 356 Phil. 678 (1998), where the Supreme Court held that recipients and approving authorities of disallowed disbursements pertaining to unauthorized benefits of government employees are not liable to refund such disbursements if they acted in good faith.

who received the Incentive Allowance refund the total amount of ₱19,356,934.18, considering that the POEA officials were responsible for the approval and the authorization of the illegal disbursement, which the POEA employees willingly received despite not rendering any service for OWWA.

POEA filed a motion for reconsideration, which the COA properly denied on December 23, 2013.[18] POEA thus filed a petition for *certiorari* before this Court on February 7, 2014.[19] On February 18, 2014, this Court directed POEA to implead OWWA as a necessary party to the case.[20] On August 8, 2014, POEA, now joined by OWWA, filed an Amended Petition for *Certiorari*.[21] The Court subsequently directed the parties to file their respective memoranda.[22]

The Parties' Arguments

POEA and OWWA argue that the grant of the incentive allowance to POEA employees from OWWA funds is supported by applicable laws and regulations. Essentially, they argue that the incentive allowance is sanctioned by Section 64 of P.D. No. 1177 and OWWA Board Resolution No. 35. The incentive allowance has existed since 1982 and is therefore not only allowed under E.O. No. 110, series of 1986, which authorized certain national government agencies to continue paying existing allowances, but has also ripened into "a practice of tradition which can neither be abandoned nor diminished."[23] Furthermore, its lack of manpower and information system capabilities necessitated the tapping of POEA's services to increase collections. The cooperation between the two agencies was institutionalized by their Joint Memorandum and integrated into

---

[18] *Rollo*, pp. 47-52.

[19] Id. at 3-33.

[20] Id. at 177-178.

[21] Id. at 205-232.

[22] Id. at 403-404.

[23] Id. at 446; Petitioners' Memorandum.

the POEA contract processing system, such that POEA employees were trained in OWWA collection procedures. The cooperation, it is averred, resulted in a tremendous increase in OWWA fee collection.

The agencies further argue that Section 12 of R.A. No. 6758 does not apply to the POEA incentive allowance because the benefit has existed long before the enactment of said law and has therefore ripened into a vested right which cannot be prejudiced by the retroactive application of a law. Likewise, the POEA incentive allowance does not violate the constitutional prohibition on double compensation because the benefit is in the nature of a gratuity, which was voluntarily granted by the OWWA Board within its statutory powers. Furthermore, the amount does not come directly from the Welfare Fund but forms part of OWWA's operating expenses.[24]

Meanwhile, the COA, through the Solicitor General, argues that the payment of the incentive allowance is not justified. While POEA and OWWA have separate functions under their charters, they nevertheless have the same essential mandate of ensuring OFW welfare; hence, POEA employees cannot receive allowances for performing services that are part of the essential mandate of their agency. Assuming *arguendo* that collection of Welfare Fund contributions is not a function of POEA, the contracting-out of such service to POEA is not justified under Section 64 of P.D. No. 1177, since it was proven in the POEA audit that OWWA employees did the actual task of collection, with POEA merely serving as a collection facility, without any service rendered by its employees. The national audit body further argues that petitioners failed to prove that the incentive allowance was integrated into the basic pay of POEA employees. The POEA incentive allowance cannot be classified as an exempt allowance under Section 12 of R.A. No. 6758 because it is in the nature of compensation for services rendered, as opposed to allowances given to defray expenses in relation to the jobs of POEA employees.

---

[24] Id. at 451-452.

The Court's Ruling

The petition is unmeritorious and should be dismissed.

OWWA Fund collection is part of POEA's statutory mandate.

In their Memorandum, POEA and OWWA base their case on P.D. No. 1177, or the Budget Reform Decree of 1977, which lays down a standardized procedure for the preparation, authorization, execution, expenditure, and accounting of government agency budgets. Specifically, petitioners rely on Section 64 of the law, which reads as follows:

> SECTION 64. *Contracting of Activities*. — Agencies may enter into contracts with individuals or organizations, both public and private, subject to provisions of law and applicable guidelines approved by the President: provided, that contracts shall be for specific services which cannot be provided by the regular staff of the agency, shall be for a specific period of time, and shall have a definite expected output: provided, further, that implementing, monitoring and other regular and recurring agency activities shall not be contracted for, except for personnel hired on an individual and contractual basis and working as part of the organization, or as otherwise may be approved by the President: provided, finally, that the cost of contracted services shall not exceed the amount that would otherwise be incurred had the work been performed by regular employees of government, except as may be authorized under this section.

Section 64 specifically regulates government spending on contracting-out of services. The provision authorizes government agencies to enter into contracts with other public or private entities, subject to the following conditions: 1) the contract shall be subject to law and applicable guidelines approved by the President; 2) the contract shall be for a specific service which *cannot* be provided by the regular staff of the agency; 3) the contract must be for a specific duration of time; 4) the contract must set forth definite expected outputs; and 5) the contract cost shall not exceed the cost of the same service had it been performed by regular employees of the government. The provision also prohibits the contracting out of *implementing, monitoring, and other regular and recurring agency activities.*

Therefore, to determine if a service may be properly contracted out by a government agency, the first step is to ascertain the nature of the service sought to be contracted out. If the service is an implementation, monitoring, or other regular and recurring activity of the agency, it cannot be contracted out.

In the case at bar, the OWWA Board, through Resolution No. 35, s. 1982, authorized the payment to POEA of incentive allowance equivalent to 2% (later reduced to 1%) of its total collections because "the POEA assists the Welfare Fund in processing and determining the Welfare Fund fees due from employers hiring Filipino workers for overseas employment as part of its processing procedures," without elaborating on the form or manner of assistance extended by the latter. However, the minutes of the November 21, 2001 meeting of the OWWA Board states the following:

> 7.0 POEA's Incentive Fee
>
> 7.1 A lengthy and lively discussion on the proposed POEA Incentive fee followed because some members of the Board wanted to tie it up with the OWWA membership collection fee at the premises of POEA. They wanted that whatever amount that should be given as incentive to POEA should be in exchange for the implementation of either the per contract collection fee or basically yearly or regular renewal basis.
>
> x x x x
>
> 7.3 Trustee Pasalo stated, "what Director Dizon have said is nice but all other agencies are independent of each other" when it comes to budget. She asked, "why should we give to them one percent when it is not getting any funds from the government?" They should also be realistic that it's no longer the employer that pays for the Welfarefund [sic] aside from the seamen who also pay ten dollars.
>
> 7.4 Administrator Soriano gave the figures for the "losses versus the expected revenues" from POEA if they grant the one percent incentive fee. For the year 2001 the losses in OWWA contributions will amount to about Php 264,114,400.00 while the expected grant if allowed will only be Php 4,131,523.00. OWWA expects to increase their revenues if a new collection scheme is approved and at the same time POEA is given their one percent incentive fee starting 2001.

7.5 Agreements

x x x x

7.5.2. It was also agreed that a one percent incentive fee shall be given to POEA retroactive to July 1, 2001 subject to periodic review by the Board.[25]

The foregoing excerpts show that the Incentive Allowance was intended to be consideration for the integration of OWWA dues collection into the POEA contract processing system. However, as found by the COA audit team assigned at POEA, no POEA employees were involved in the task of collecting OWWA dues, since OWWA collection officers were deployed to POEA for the purpose. Nevertheless, it is clear from the foregoing excerpts that the Incentive Allowance was intended as consideration for the POEA's assistance in (or, to be more precise, facilitation of) OWWA dues collection. The Court agrees with the COA's assertion that POEA is not entitled to receive allowances for such a service, because the function of collecting contributions to the Welfare Fund lies precisely with POEA. Letter of Instructions (LOI) No. 537, which created the Welfare Fund states in part:

The Fund shall be financed from:

1. All earnings of the [Overseas Employment Development Board] from travel services and Welfare Fund collections.

2. All Welfare Fund collections of the [Bureau of Employment Services].

3. All Welfare Fund collections of the [National Seamen Board].

4. All Training Fund collections of the [Bureau of Employment Services], the [Overseas Employment Development Board] and the [National Seamen Board].

5. Donations and other contributions from employers served by the [Bureau of Employment Services], the [Overseas Employment Development Board] and the [National Seamen Board].

---

[25] Id. at 119.

6. Other donations, contributions, and other sources of income as may be determined by the Board of Trustees of the Fund.

The [Bureau of Employment Services], the [Overseas Employment Development Board] and the [National Seamen Board] are hereby directed to collect contributions for the Welfare and Training Fund for Overseas Workers in accordance with rules and regulations promulgated by the Secretary of Labor. (Emphasis and underscoring supplied)

Section 4 of E.O. No. 797, which created the POEA, states in part:

SECTION 4. There is hereby created a Philippine Overseas Employment Administration, hereinafter referred to as the Administration, which shall assume the functions of the Overseas Employment Development Board, the National Seamen Board, and the overseas employment functions of the Bureau of Employment Services; which shall absorb the applicable functions, appropriations, records, equipment, property, and such personnel as may be necessary of the abolished units; and which shall have the powers, functions, and structure as provided for below. x x x

As the successor agency of the Overseas Employment Development Board and the National Seamen Board, POEA clearly inherited these agencies' mandate under LOI No. 537 to collect contributions for the Welfare Fund. This mandate was not removed by P.D. Nos. 1694 and 1809, which both state that "[a]ll contributions to the Welfare and Training Fund collected pursuant to Letter of Instructions No. 537 issued on May 1, 1977 shall be transferred to the Welfund."[26] In fact, it was only in 2016, upon the passage of R.A. No. 10801, did the Legislature explicitly authorize OWWA to collect for the OWWA Fund.[27] Section 64 of P.D. No. 1177 does not even apply here,

---

[26] PRESIDENTIAL DECREE NO. 1694, Section 2; PRESIDENTIAL DECREE NO. 1809, Section 1.

[27] REPUBLIC ACT NO. 10801, Section 13 (a), Previously, OWWA had the following powers under Section 4 of Presidential Decree No. 1694:

a. To formulate and implement measures and programs to attain the fund's objectives and purposes;

because the service sought to be contracted out is part of the purported contractor's statutory mandate.

Even assuming *arguendo* that R.A. No. 10801 explicitly empowered OWWA to collect contributions to the OWWA Fund, OWWA cannot contract out such function because it is not only a regular and recurring agency activity but also a core part of its statutory mandate.[28] While POEA or its employees may be deputized by OWWA under Section 13 of R.A. No. 10801 to serve as collecting agents, POEA and its employees are not entitled to receive allowances for such deputation, because, as the COA aptly observed, assistance and facilitation of Welfare Fund collection should still be considered part and parcel of POEA's mandate; especially considering the following functions of POEA and OWWA:

POEA functions	OWWA functions
(b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements; (c) Protect the rights of Filipino workers for overseas	a. To formulate and implement measures and programs to attain the fund's objectives and purposes; b. To enter into agreements and contracts in connection with its operations and objectives.[29] (a) To protect the interest and promote the welfare of member-OFWs in all phases of overseas employment in recognition of

b. To enter into agreements and contracts in connection with its operations and objectives;

c. To manage Fund resources subject to the provisions of Sec. 5 hereof;

d. To issue rules and regulations to carry out the objectives and purposes of the Welfund and the provisions of this Decree.

[28] REPUBLIC ACT NO. 10801, Sections 6 (e) and 13.

[29] PRESIDENTIAL DECREE NO. 1694, Section 4.

employment to fair and equitable recruitment and employment practices and ensure their welfare;	their valuable contribution to the overall national development effort;
(j) Promote and protect the well-being of Filipino workers overseas. x x x	(b) To facilitate the implementation of the provisions of the Labor Code of the Philippines x x x and the Migrant Workers and Overseas Filipinos Act of 1995 x x x, concerning the responsibility of the government to promote the well-being of OFWs. Pursuant thereto, and in furtherance thereof, it shall provide legal assistance to member-OFWs;
(n) Establish and maintain close relationship and enter into joint projects with the Department of Foreign Affairs, Philippine Tourism Authority, Manila International Airport Authority, Department of Justice, Department of Budget and Management and other relevant government entities, in the pursuit of its objectives. The Administration shall also establish and maintain joint projects with private organizations, domestic or foreign, in the furtherance of its objectives.[30]	(c) To provide social and welfare programs and services to member-OFWs x x x;
	(d) To provide prompt and appropriate response to global emergencies or crisis situations affecting OFWs and their families;
(b.1) Philippine Overseas Employment Administration. The Administration shall regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities	(e) To ensure the efficiency of collections and the viability and sustainability of the OWWA Fund through sound, judicious, and transparent investment and management policies;
	(g) To develop, support and finance specific projects for the

[30] EXECUTIVE ORDER NO. 247, Section 3.

concerned, when necessary a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and domestic manpower requirements.[31]	welfare of member-OFWs and their families; and (h) To ensure the implementation of all laws and ratified international conventions within its jurisdiction.[32]

This court agrees with the COA's assertion that the charters of the OWWA and POEA are statutes *in pari materia*, and should therefore be construed together. Statutes *in pari materia* are those that pertain to the same subject matter;[33] and such statutes must be

> read and construed together because enactments of the same legislature on the same subject are supposed to form part of one uniform system; later statutes are supplementary or complimentary [sic] to the earlier enactments and in the passage of its acts the legislature is supposed to have in mind the existing legislations on the subject and to have enacted its new act with reference thereto.[34]

In *Office of the Solicitor General v. Court of Appeals*,[35] this Court explained that:

> It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete,

---

[31] REPUBLIC ACT NO. 9422 (Amendment to Republic Act No. 8042), Section 1.

[32] REPUBLIC ACT NO. 10801, Section 6.

[33] *The Office of the Solicitor General (OSG) v. Court of Appeals, et al.*, 735 Phil. 622, 630 (2014); *Philippine Economic Zone Authority v. Green Asia Construction & Dev't. Corp.*, 675 Phil. 846, 856-857 (2011); *Tan Co v. Civil Registrar of Manila*, 467 Phil. 904, 913 (2004).

[34] *Tan Co v. Civil Registrar of Manila,* id.

[35] Supra note 33.

coherent and intelligible system. The rule is expressed in the maxim, "interpretare et concordare legibus est optimus interpretandi," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[36]

Being statutes relating to the same subject matter of overseas Filipino labor regulation and promotion, the charters of the OWWA and the POEA must be construed together. A close reading of the statutory functions of the two agencies evinces the legislature's intent to have POEA and OWWA as two separate but complementary entities working together to promote the government's overseas labor policies and ensure the welfare of OFWs; with POEA focusing on pre-employment matters such as recruitment, placement and labor contract management, and OWWA focusing on employment and post-employment matters such as insurance premiums, labor standards implementation, emergency assistance, reintegration, and social services.

The complementary nature of OWWA and POEA functions manifests itself in the provisions of the new OWWA charter, which institutionalizes the integration of OWWA dues collection into the POEA contract processing system[37] and makes the POEA Administrator an ex officio member of the OWWA Board of Trustees.[38] Under Section 18 of the OWWA charter, the POEA is required to ensure that overseas employment contracts contain a stipulation that "contributions to the OWWA Fund must be paid by the employers or principals, or in their default, by the recruitment/manning agency in the case of new hires." Even before the enactment of the new OWWA charter, the COA has already observed that

> [t]he joint policy of the POEA and OWWA under the claimed agreement to the effect that exit clearances shall not be issued by POEA unless OFWs pay their OWWA membership fees and medical

---

[36] Id. at 628.

[37] REPUBLIC ACT NO. 10801, Sections 5, 8, and 13 (a).

[38] Id., Section 20.

care insurance premiums is germane to the agencies' respective mandates and objectives. These functions are clearly shown to be a shared responsibility of both the POEA and OWWA. Thus, POEA cannot disown said functions to justify its action to require OWWA to pay 2% (now 1%) incentive fee as exemplified by OWWA Board Resolution No. 35 dated November 10, 1982.[39]

Furthermore, R.A. No. 10801 was enacted long after the disallowed disbursements were made. Under the laws in force at that time of the disbursements, it is clear that the task of Welfare Fund collection properly pertained to POEA; and therefore, it was improper for OWWA to pay POEA employees an incentive allowance for doing something that is part of their agency's mandate.

Incentive allowance payments in question violate the double compensation rule and the allowance integration rule.

In 1989, Congress passed R.A. No. 6758, or the Compensation and Position Classification Act, which embodies the policy to "provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."[40] Section 12 of the law provides:

SECTION 12. *Consolidation of Allowances and Compensation.* — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

---

[39] *Rollo*, p. 158. COA-proper decision.

[40] REPUBLIC ACT NO. 6758, Section 2.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

In *National Tobacco Administration v. COA*,[41] where We reversed the disallowance of educational assistance payments to employees of the National Tobacco Administration, We explained the import of the provision, *viz.*:

Under the first sentence of Section 12, *all* allowances are integrated into the prescribed salary rates, except:

(1) representation and transportation allowances (RATA);

(2) clothing and laundry allowances;

(3) subsistence allowances of marine officers and crew on board government vessels;

(4) subsistence allowance of hospital personnel;

(5) hazard pay;

(6) allowance of foreign service personnel stationed abroad; and

(7) *such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.*

Analyzing No. 7, which is the last clause of the first sentence of Section 12, in relation to the other benefits therein enumerated, it can be gleaned unerringly that it is a "catch-all proviso." Further reflection on the nature of subject fringe benefits indicates that all of them have one thing in common — they belong to one category of privilege called *allowances* which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. In *Philippine Ports Authority vs. Commission on Audit*, this Court rationalized that "if these allowances are consolidated with the standardized rate, then the government official or employee will be compelled to spend his personal funds in attending to his duties."[42] (Citations omitted)

---

[41] 370 Phil. 793 (1999).

[42] Id. at 805.

In the 2003 case of *Phil. International Trading Corp. v. COA*,[43] where We affirmed the disallowance of Staple Food Incentive payments to employees of the Philippine International Trading Corporation, We applied the *National Tobacco Administration* ruling and held that:

> In the instant case, the Staple Food Incentives was granted under D.O. No. 79 to "help the DTI employees cope with the present economic difficulties, boost their morale and deepen their commitment and dedication to public service." Clearly therefore, the SFI is a financial assistance or a bonus falling under the second sentence of Section 12 and not a payment in consideration of the performance of an official duty. It is not a benefit within the ambit of the first sentence because it was not granted to defray or reimburse the expenses incurred in the performance of their official functions, like representation and transportation allowances, and other benefits of similar nature. x x x[44]

In the more recent case of *Maritime Industry Authority v. Commission on Audit*,[45] We affirmed the disallowance of certain non-integrated allowance and incentive payments received by officers and employees of the MARINA for lack of proof that such benefits were authorized by the Executive branch. The Court *en banc*, speaking through Associate Justice Marvic M.V.F. Leonen, held that:

> The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit: x x x
>
> In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the

---

[43] 461 Phil. 737 (2003).

[44] Id. at 749.

[45] 750 Phil. 288 (2015).

authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Action by the Department of Budget and Management is not required to implement Section 12 integrating allowances into the standardized salary. Rather, an issuance by the Department of Budget and Management is required only if additional non-integrated allowances will be identified. Without this issuance from the Department of Budget and Management, the enumerated non-integrated allowances in Section 12 remain exclusive.[46] (Citations omitted)

The general rule discernible from these cases is that all allowances being received by incumbent government employees must be integrated into the standard salary. The exceptions to this rule are: 1) allowances granted for the purpose of defraying or reimbursing expenses incurred in the performance of their official functions, as enumerated in Section 12 of R.A. No. 6758; 2) existing additional compensation received before the effectivity of R.A. No. 6758; and 3) additional compensation as determined by the Department of Budget and Management or the President. POEA and OWWA argue that the Incentive Allowance falls under the second exception because it was authorized in 1982 and has been paid to POEA employees ever since. However, in the 1999 case of *Phil. Int'l. Trading Corp. v. Commission on Audit*[47] involving the disallowance of Car Plan program benefits for PITC officers, we held that the second exception only covers incumbents receiving non-integrated allowances as of 1989, when R.A. No. 6758 took effect, *viz.*:

First of all, we must mention that this Court has confirmed in *Philippine Ports Authority vs. Commission on Audit* the legislative intent to protect incumbents who are receiving salaries and/or allowances over and above those authorized by RA 6758 to continue to receive the same even after RA 6758 took effect. In reserving the benefit to incumbents, the legislature has manifested its intent to gradually phase out this privilege without upsetting the policy of

---

[46] Id. at 314-315.

[47] 368 Phil. 478 (1999).

non-diminution of pay and consistent with the rule that laws should only be applied prospectively in the spirit of fairness and justice.[48]

Thus, in both the 2003 *PITC* and *National Tobacco Administration* rulings, We applied the second paragraph of Section 12 only to incumbent employees who were receiving non-integrated or non-integrable benefits at the time that R.A. No. 6758 took effect. In the 2003 *PITC* case, We observed that:

> x x x Accordingly, in order that the SFI may be allowed, the requisites for the entitlement of benefits falling under the second sentence of Section 12 must be established. Unfortunately, **there is no evidence on record that the recipients of the SFI were incumbents when R.A. No. 6758 took effect on July 1, 1989 and that they were in fact receiving the same at the time**. Hence, no abuse of discretion was committed by COA in disallowing the disbursement of funds for the SFI of PITC;[49] (Emphasis and underscoring supplied)

while in *National Tobacco Administration*,[50] We made the following pronouncement:

> x x x Accordingly, the Court concludes that under the aforesaid "*catch-all proviso*," the legislative intent is just to include the fringe benefits which are in the nature of *allowances* and since the benefit under controversy is not in the same category, it is safe to hold that subject educational assistance is not one of the fringe benefits within the contemplation of the first sentence of Section 12 but rather, of the second sentence of Section 12, in relation to Section 17 of R.A. No. 6758, considering that (1) **the recipients were incumbents when R.A. No. 6758 took effect on July 1, 1989, (2) were, in fact, receiving the same, at the time**, and (3) such additional compensation is distinct and separate from the specific allowances above-listed, as the former is not integrated into the standardized salary rate.[51] (Emphasis and underscoring supplied)

---

[48] Id. at 487-488.

[49] *Phil. International Trading Corp. v. COA,* supra note 43 at 749.

[50] Supra note 41.

[51] Id. at 808.

In the case at bar, while OWWA and POEA assert that the Allowance Incentive has been paid to the latter's employees since 1982, they failed to show that the officers and employees who received the payments covered by Notice of Disallowance No. 2005-015 were incumbents who have been receiving the Incentive Allowance since before the effectivity of R.A. No. 6758 in 1989. Moreover, the minutes of the November 21, 2001 OWWA Board meeting refer to the "proposed POEA incentive," the grant of which was debated lively.[52] This can only mean that sometime between the approval of the 1982 Welfare Fund Resolution and the November 21, 2001 OWWA Board meeting, Incentive Allowance payments ceased or were stopped, otherwise the OWWA Board would not have been denominated it as a "proposed incentive" and debated the merits of granting thereof. As such, the COA did not err in holding that the disallowed payments contravened the salary integration rules of R.A. No. 6758.

As for double compensation, Article IX-B, Section 8 of the Constitution states:

> Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.
>
> Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Chief Justice Enrique M. Fernando expounded on the meaning of this provision in *Peralta v. Auditor General Mathay*,[53] where the Court affirmed the disallowance of cost of living allowance, incentive, and Christmas bonus payments made to a trustee of the Government Service Insurance System, *viz.*:

> It is expressly provided in the Constitution: "No officer or employee of the government shall receive additional or double compensation

---

[52] *Rollo*, p. 119.

[53] 148 Phil. 261 (1971).

unless specifically authorized by law." This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position. It is an entirely different matter if the legislative body would itself determine for reasons satisfactory to it that he should receive something more. If it were to be thus though, there must be a law to that effect. So the Constitution decrees.

x x x x

So it is in the case of the bonuses received by him. It is quite obvious that by its very nature, a bonus partakes of an additional remuneration or compensation. The very characterization of what was received by petitioner as bonuses being intended by way of an incentive to spur him possibly to more diligent efforts and to add to the feeling of well-being traditionally associated with the Christmas season would remove any doubt that the Auditor General had no choice except to deduct from petitioner's gratuity such items.[54]

Our foregoing disquisitions have amply demonstrated that the collection of OWWA dues is within the statutory mandate of POEA and is therefore part and parcel of the job description of its employees. Thus, under the applicable statutes and the basic law, any and all compensation or benefits received by the employees of POEA for the discharge of such function should be deemed integrated into their basic salaries, unless a law or executive issuance specifically states that they be given additional compensation therefor. POEA and OWWA have failed to

[54] Id. at 2265-266.

demonstrate that the Incentive Allowance is authorized by any statute or executive pronouncement, apart from the erroneous 1982 OWWA Board Resolution No. 35. It is therefore clear that the payment of the Incentive Allowance violated the rule against double compensation.

Refund of disallowed amounts

As a general rule, government officials and employees directly responsible for unlawful expenditures shall be personally liable therefor,[55] regardless of whether they acted in good faith.[56] Nevertheless, starting with the 1998 Decision in *Blaquera v. Alcala*,[57] jurisprudence has carved out a limited exception in case of disallowed benefits of government employees.[58] Since then, the Court has approached the return of COA-disallowed benefit payments on a case-to-case basis. Only this year, in the very recent case of *Madera v. Commission on Audit*,[59] did the Court synthesize the laws and jurisprudence governing the return of benefit payments disallowed upon audit and lay down definitive rules therefor, *viz.*:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

   a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

---

[55] PRESIDENTIAL DECREE NO. 1445, Section 3; EXECUTIVE ORDER NO. 292 (1987), Book V, Chap. 9, Sec. 52.

[56] *Maritime Industry Authority v. Commission on Audit,* supra note 45; *Vicencio v. Villar*, 690 Phil. 59 (2012).

[57] Supra note 17.

[58] See *Maritime Industry Authority v. Commission on Audit,* supra note 45 at 336.

[59] G.R. No. 244128, September 8, 2020.

b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case-to-case basis.[60]

The Court likewise adopted the enumeration of badges of good faith in the separate opinion of Associate Justice Marvic M.V.F. Leonen, *viz.*: (1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and (5) with regard to questions of law, that there is a reasonable textual interpretation on its legality.[61] However, the Court also held that "the ultimate analysis of each case would still depend on the facts presented x x x."[62]

In the case at bar, the COA LAO-N did not order a refund, as it found that the OWWA and POEA officers involved in the disbursement and receipt of the Incentive Allowance acted in good faith, under the honest belief that they were entitled thereto. However, the COA proper disagreed and held that the POEA officials who authorized the payments, as well as the POEA employees who received the allowances, are both at fault and should refund the disallowed payments, because the allowance

---

[60] *Rollo*, pp. 35-36.

[61] Id. at 22, 36.

[62] Id.

was contrary to law and regulation, and the employees had no right to receive such.

Upon a close perusal of the record, this Court sustains the COA proper. The incentive allowance payments must be returned, for the following reasons.

First, while there is no showing that the approving officers acted with malice or bad faith, they are nevertheless guilty of gross negligence[63] for failing to realize that Welfare Fund collection is part of their agency's functions. As POEA officials, they are expected to be fully acquainted with the scope of the agency's mandate, which, as we have demonstrated, undoubtedly includes collecting for the Welfare Fund. Consequently, they should have not approved the incentive allowance payments because these amounted to unauthorized additional compensation for services rendered within the agency's legal mandate. The provisions of LOI No. 537 and E.O. No. 797 clearly and categorically state that Welfare Fund collection is a mandate of the POEA, and the approving officers are duty bound to know and follow said laws.

Second, the sourcing of additional compensation from the Welfare Fund was prohibited as early as 1981. As aptly pointed out by the COA, Item 4.5 of Joint Circular No. 9-81[64] issued by the Department of Finance,[65] Department of Budget and Management,[66] and the COA provides:

---

[63] In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable. *Daplas v. Department of Finance*, 808 Phil. 763 (2017), citing *Atty. Navarro v. Office of the Ombudsman, et al.*, 793 Phil. 453 (2016), *Office of the Ombudsman v. Bernardo*, 705 Phil. 524 (2013), and *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842 (2007).

[64] https:www.coa.gov.ph/index.php/2013-06-19-13-06-41/1-circulars/category/4485-cy-1981?download=17416:cy-1981&start=40. Accessed 28 September 2020. As amended by Joint COA-DBM-DOF Circular No. 01-97 (Guidelines for the Transfer by National Government Agencies of All Cash Balances to the National Treasury), issued January 2, 1997.

[65] Officially known as the Ministry of Finance (MOF) at the time of the issuance of the Joint Circular.

4.5 In no case shall the trust receipts be utilized for the payment of additional compensation to employees in the form of allowances, incentive pay, bonuses or other forms of additional compensation, except as may be authorized pursuant to PD No. 985 or PD No. 1597, nor shall it be used to create new positions, to augment salaries of regular personnel or to purchase motor vehicles without prior approval of the Office of the President pursuant to LOI No. 29, neither shall these be used to fund unauthorized activities/payments[.] x x x

In turn, the Joint Circular defines trust receipts as

collections from non-income sources authorized by law for specific purposes which are collected/received by a government office or agency acting as a trustee, agent or administrator, or which have been received guaranty for the fulfillment of an obligation and all other collections classified by law and regulations as trust receipts.[67]

Under the foregoing definition, there can be no doubt that monies from the Welfare Fund constitute trust receipts. Under LOI No. 537, collections from the Welfare Fund were earmarked for four specific purposes.[68] The Fund was, and still is, collected and administered by duly designated agencies, namely, the POEA (as collector) and the OWWA (as collector and administrator). The OWWA itself, as early as 2003, was cognizant of this fact when it promulgated the Guidelines on OWWA Membership, Article VI, Sections 1 and 2 of which provide:

---

[66] Officially known as the Ministry of the Budget at the time of the issuance of the Joint Circular.

[67] MOB-MOF-COA Joint Circular No. 9-81, Item 3.1.

[68] 1. To provide social and welfare services to Filipino overseas workers, including insurance coverage, social work assistance, legal assistance, placement assistance, cultural services, remittance services, and the like.

2. To provide skills and career development services to Filipino overseas workers and their replacements in order to insure adequate supply of manpower for the national economy as well as for export.

3. To undertake studies and researches for the enhancement of their social, economic and cultural wellbeing.

4. To develop, support and finance specific projects for the benefit of Filipino overseas workers.

SECTION 1. *The Trust Fund*. — OWWA fund is a single trust fund composed of membership contributions of land-based and sea-based workers; investment and interest income; and income from other sources:

Out of the membership contribution, P165.00 shall be allocated as Insurance Benefit Program Fund to service all insurance claims.

SECTION 2. *Safeguarding the Trust Fund*. — The OWWA Fund, being a Trust Fund, shall be managed and expended in accordance with the purpose of the Fund and safeguarded against any possible loss and misuse.[69]

Any doubt as to the nature of the Welfare Fund as a trust fund has now been dispelled by R.A. No. 10801, *viz.*:

SECTION 37. *The OWWA Fund.* — The Welfare Fund for Overseas Workers created under Letter of Instruction No. 537 and Presidential Decree No. 1694, as amended by Presidential Decree No. 1809, is hereinafter referred to as the OWWA Fund. The OWWA Fund is a private fund held in trust by the OWWA. Being a trust fund, no portion thereof or any of its income, dividends or earnings shall accrue to the general fund of the National Government. Neither shall any amount or portion thereof be conjoined with government money, nor revert to the National Government. In the same manner, it is exempted from the "one fund doctrine" of the government.

Third, assuming *arguendo* that the incentive allowance payments were sourced from OWWA's operating budget and not from the Welfare Fund itself, it was nevertheless illegal because the POEA officials and employees did not render any service which would entitle them to such payments. As earlier stated, the audit conducted by the POEA resident auditors found that the actual task of collection was still done by OWWA employees who were stationed in the POEA offices.[70] In effect, OWWA was paying POEA for the privilege to station its

---

[69] Guidelines on OWWA Membership, OWWA Board Resolution No. 038-03, September 19, 2003.

[70] *Rollo*, p. 44. COA-proper decision.

collection officers in the latter's premises. This is clearly incompatible with the mandates of both agencies, which are tasked to *work together* in providing pre-employment, employment, and post-employment services to overseas Filipino workers. At the very least, the payment should have been credited to the funds of POEA itself, and not to its officials and employees, considering that they rendered no service whatsoever which would entitle them to any payment, much less an *incentive allowance*.

In line with the *Madera* guidelines and in view of the pertinent factual findings and conclusions of this Court, *i.e.*, that the certifying and approving officials were grossly negligent in approving the Incentive Allowance despite the lack of legal and factual bases therefor, and that no services were rendered by the POEA officials and employees who received said Incentive Allowance, this Court affirms the COA's Decision to disallow the payment of Incentive Allowance in the total amount of ₱19,356,934.18, in accordance with the itemized breakdown of liabilities in Notice of Disallowance No. 2005-015, with the additional modification that the certifying and approving officials shall be liable for the total amount of the disallowance, there being no excusable amounts under paragraphs 2 (b), 2 (c), and 2 (d) of the *Madera* guidelines.

WHEREFORE, the present petition is **DISMISSED**. Decision No. 2011-023 dated January 31, 2011 and Decision No. 2013-226 dated December 23, 2013, both rendered by the Commission on Audit *en banc*, are hereby **AFFIRMED WITH MODIFICATION**. The Philippine Overseas Employment Administration employees and officials who were found to have received the Incentive Allowance, as identified in COA Decision No. 2013-226 and Notice of Disallowance No. 2005-015 dated April 5, 2005, are hereby **ORDERED** to return the disallowed amounts corresponding to their personal liabilities as listed in Notice of Disallowance No. 2005-015 and its annexes. The POEA officials who certified and approved the payment of said Incentive

Allowance, as identified in COA Decision No. 2013-226 and Notice of Disallowance No. 2005-015 dated April 5, 2005, are hereby **DECLARED SOLIDARILY LIABLE** for the entire disallowed amount.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Inting, Zalameda, Lopez, Delos Santos, and *Rosario, JJ.,* concur.

Carandang and *Lazaro-Javier, JJ.,* on official leave.

EN BANC

[G.R. No. 214444. November 17, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **LITO PAÑA y INANDAN,** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; DEFENSE OF INSANITY; A PLEA OF INSANITY IS A CONFESSION AND AVOIDANCE DEFENSE IN WHICH AN ACCUSED ADMITS THE COMMISSION OF A CRIME BUT SEEKS EXEMPTION FROM CRIMINAL LIABILITY DUE TO LACK OF VOLUNTARINESS OR INTELLIGENCE.— One of the basic moral assumptions in criminal law is that all persons are "naturally endowed with the faculties of understanding and free will." When a person is charged of a crime, the act is deemed to have been committed with "deliberate intent, that is, with freedom, intelligence[,] and malice."

The presumption in favor of sanity is based on practical considerations. . . .

Since the law presumes all persons to be of sound mind, insanity is the exception rather than the general rule. It is a defense in the nature of confession and avoidance. In claiming insanity, an accused admits the commission of the criminal act but seeks exemption from criminal liability due to lack of voluntariness or intelligence.

2. ID.; ID.; ID.; INSANITY, DEFINED; AN INSANE PERSON IS LIABLE FOR CRIMINAL ACTS COMMITTED DURING LUCID INTERVAL.— This Court defines insanity as:

> a manifestation in language or conduct of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition.

An insane person "has an unsound mind or suffers from a mental disorder," but this Court admits that an insane person may have lucid intervals during which they may be held liable for criminal acts.

3. ID.; ID.; ID.; DEPRIVATION OF INTELLIGENCE IS NOT A SYMPTOM OF EVERY MENTAL ILLNESS.— Complete deprivation of intelligence has been equated to "defect of the understanding" such that the accused must have "no full and clear understanding of the nature and consequences of [their] acts." Deprivation of intelligence, however, is not a symptom of every mental illness.

4. ID.; ID.; ID.; FEEBLEMINDEDNESS IS INSUFFICIENT TO SUPPORT A CLAIM OF INSANITY.— Feeblemindedness has also been rejected by this Court as sufficient basis to support a claim of insanity. In *Formigones*, the accused was not deemed insane as he was not completely deprived of reason at the time he committed the offense and could still distinguish right from wrong. Even his past conduct did not indicate that he was mentally ill[.]

5. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; COMPLETE DEPRIVATION OF INTELLIGENCE OR REASON AT THE TIME IMMEDIATELY BEFORE, DURING, OR AFTER THE COMMISSION OF THE OFFENSE MUST BE PROVED.— Under our current rule, complete deprivation of intelligence or reason at the time of the commission of the crime is an assertion which must be proven beyond reasonable doubt.

Insanity relates to a person's state of mind. However, a person's motivations, thoughts, and emotions are only manifested through overt acts. Courts, therefore, can only consider evidence relating to the behavioral patterns of the accused to determine whether they are legally insane. . . .

The complete deprivation of intelligence must be manifested at the time "preceding the act under prosecution or to the very moment of its execution." Thus, courts admit evidence or proof of insanity which relate to the time immediately before, during, or after the commission of the offense.

6. ID.; ID.; ID.; ID.; ID.; THE SLIGHTEST SIGN OF REASON, BEFORE, DURING, OR AFTER THE COMMISSION OF

THE CRIME OVERTHROWS THE DEFENSE OF INSANITY.— Because our current rule requires complete deprivation of intelligence, the slightest sign of reason before, during, or after the commission of the crime instantly overthrows the insanity defense.

This is despite the wording of our penal law and recognition in our jurisprudence that an insane person's mental condition is not static and that they may experience lucid intervals from time to time. This is especially critical in our jurisdiction where insanity defense is mostly claimed based on mental disorders with active-phase symptoms such as schizophrenia.

7. ID.; ID.; ID.; ID.; ID.; BURDEN OF PROOF; QUANTUM OF EVIDENCE; THE DEFENSE BEARS THE BURDEN OF DISPUTING THE PRESUMPTION OF SANITY BY CLEAR AND CONVINCING EVIDENCE OF ACCUSED'S INSANITY.— An accused interposing the insanity defense admits the commission of the crime which would otherwise engender criminal liability. However, the accused pleas for acquittal due to lack of freedom, intelligence, or malice. In doing so, the defense must prove insanity. However, the shift of burden from the prosecution to defense does not necessarily mean shifting the same quantum of evidence because the allegation sought to be proven are different.

Verily, insanity is not an element of the crime that should be demonstrated with proof beyond reasonable doubt. The defense only bears the burden of disputing the presumption of sanity. Ultimately, the defense must proffer evidence of insanity sufficient to overcome the presumption. This quantum of evidence is not necessarily proof beyond reasonable doubt.

Moreover, proof of defense, mitigation, excuse, or justification in criminal cases need not be proven beyond reasonable doubt.

. . .

The disparity in the quantum of evidence applied in insanity defenses vis-à-vis other defenses of avoidance and confession does not support any clear judicial policy. It simply imposes a standard more stringent on defendants who are not in full control of their faculties. . . .

Therefore, the quantum of evidence in proving the accused's insanity should no longer be proof beyond reasonable doubt, but clear and convincing evidence.

8. ID.; ID.; ID.; ID.; ID.; EXPERT WITNESSES; THE MEDICAL EXPERTS' TESTIMONIES ARE NOT INDISPENSABLE IN INSANITY DEFENSE CASES, BUT THEIR EVALUATION AND OBSERVATIONS HAVE GREATER EVIDENTIARY VALUE IN DETERMINING AN ACCUSED'S MENTAL STATE.— Insanity, as an exempting circumstance, must be shown medically, unless there are extraordinary circumstances and there is no other evidence available. Our procedural rules allow ordinary witnesses to testify on the "mental sanity of a person with whom [they are] sufficiently acquainted," but reports and evaluation from medical experts have greater evidentiary value in determining an accused's mental state. The nature and degree of an accused's mental illness can be best identified by medical experts equipped with specialized knowledge to diagnose a person's mental health.

. . .

It is highly crucial for the defense to present an expert who can testify on the mental state of the accused. While testimonies from medical experts are not absolutely indispensable in insanity defense cases, their observation of the accused are more accurate and authoritative. Expert testimonies enable courts to verify if the behavior of the accused indeed resulted from a mental disease.

9. ID.; ID.; ID.; ID.; ID.; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; RIGHT TO DUE PROCESS; THE CONDUCT OF MENTAL EXAMINATION IS IMPERATIVE TO ACCORD DUE PROCESS TO AN ACCUSED; FACTORS TO CONSIDER IN DETERMINING THE MENTAL FITNESS OF AN ACCUSED TO STAND TRIAL.— This Court realizes the difficulty and additional burden on the accused to seek psychiatric diagnosis. Therefore, judges must be given leeway to order the mental examination of the accused either through discovery procedures or as an incident of trial.

The conduct of mental examination is imperative not only to aid the courts but to determine the accused's mental fitness

to participate in trial. This is crucial to accord due process to the accused. . . .

While the conduct of mental examination rests upon the discretion of the trial court, this Court may remand the case and order an examination when there are overwhelming indications that the accused is not in the proper state of mind. Among the factors that may be considered is "evidence of the defendant's irrational behavior, history of mental illness or behavioral abnormalities, previous confinement for mental disturbance, demeanor of the defendant, and psychiatric or even lay testimony bearing on the issue of competency in a particular case."

. . .

While ordering a mental examination would have been valuable in this case, there were no indications that the accused-appellant was mentally ill and incompetent to stand trial.

10. ID.; ID.; ID.; ID.; ID.; THREE-WAY TEST TO SUSTAIN THE INSANITY DEFENSE.— [W]e clarify the guidelines laid down in *Formigones*. Under this test, the insanity defense may prosper if: (1) *the accused was unable to appreciate the nature and quality or the wrongfulness of his or her acts;* (2) *the inability occurred at the time of the commission of the crime;* and (3) *it must be as a result of a mental illness or disorder.*

We now use a three-way test: first, insanity must be present at the time of the commission of the crime; second, insanity, which is the primary cause of the criminal act, must be medically proven; and third, the effect of the insanity is the inability to appreciate the nature and quality or wrongfulness of the act.

In this case, the defense failed to satisfy the tests.

11. ID.; ID.; ID.; ID.; ID.; WITNESSES; THE MOTHER OF AN ACCUSED MAY BE CONSIDERED COMPETENT TO TESTIFY ON THE LATTER'S STATE OF MIND.— [A]lthough the accused and his mother were presented as witnesses to prove accused-appellant's insanity, the only witness who may be considered competent to testify on the accused's state of mind is the accused's mother, Soledad. An accused whose mental condition is under scrutiny cannot competently testify on their state of insanity. An insane person would naturally

have no understanding or recollection of their actions and behavioral patterns. They would have to rely on hearsay evidence to prove their claims as to what actually happened.

12. ID.; ID.; ID.; ID.; ID.; UNEASINESS, QUIETNESS, AND SLEEPLESS NIGHTS ARE NOT MANIFESTATIONS OF INSANITY.— Soledad may be considered as a competent witness as she has personal knowledge of her son's behavior and conduct. In her testimony, she described the recurring manic episodes of her son in the past: . . .

However, that accused-appellant was uneasy, quiet, and suffered from sleepless nights does not make him legally insane. If at all, these may only have been manifestations of unusual behavior or his alleged depression.

Aside from this, Soledad's testimony regarding her son's behavior does not relate to the time immediately before or simultaneous with the commission of the offense.

13. ID.; ID.; ID.; ID.; ID.; FLIGHT; ACCUSED'S FLIGHT TO EVADE ARREST SHOWS UNDERSTANDING OF THE DEPRAVITY AND CONSEQUENCES OF COMMITTING THE CRIMINAL ACT.— [A]ccused-appellant's reaction and behavior immediately after he had killed the [victim] showed that he understood the wrongfulness of his action. As narrated by the police, the accused ran away to evade arrest. This, to our mind, shows that he understood the depravity and consequences of his action.

14. ID.; ID.; ID.; ID.; ID.; THE CONVICTION OF AN ACCUSED STANDS IN THE ABSENCE OF PROOF OF INSANITY AT THE TIME OF COMMITTING THE CRIME.— The defense should have presented other witnesses who could have given a more objective assessment of the accused's mental condition such as the quack doctor who he allegedly consulted or other people from his community who had personal knowledge of his behavior.

. . .

The sole testimony of accused-appellant's mother was insufficient to show that his actions were caused by a mental illness. In sum, the defense failed to show clear and convincing evidence that as a result of a mental illness, accused-appellant

was unable to appreciate the nature and quality of the wrongfulness of his acts at the time of the commission of the crime.

Due to the failure of the accused-appellant to prove that he was legally insane at the time of the commission of the offense, his conviction stands.

15. ID.; MURDER; CIVIL LIABILITY THEREFOR.— [I]n accordance with *People v. Jugueta,* this Court modifies the amount of civil indemnity from ₱50,000.00 to ₱100,000.00. Moral damages and exemplary damages of ₱100,000.00 each should also be awarded.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

The standard of legal insanity, which is complete deprivation of intelligence, is a concept born out of the narrow view that rejects the psychodynamic nature of human psychology. It fails to acknowledge that mental illnesses exist in a spectrum and its all-or-nothing notion of mental illnesses reflects a detachment from established and contemporary concepts of mental health.[1]

Persons who suffer from mental illnesses are no longer viewed as wild beasts who are absolutely devoid of mental faculties. The diagnosis and studies on mental illnesses and disorders have progressed since. Attitude and views towards mental health have significantly evolved. Tests have been recalibrated and reformulated to better deal with the peculiarity and contours of insanity defense cases — tests whose merits are now recognized by this Court.

---

[1] Michael L. Perlin, *Psychodynamics and the Insanity Defense: "Ordinary Common Sense" and Heuristic Reasoning,* 69 NEB. L. REV 3, 5 (1990).

We clarify the guidelines laid down in *People v. Formigones*[2] and now apply a three-way test: first, insanity must be present at the time of the commission of the crime; second, insanity, which is the primary cause of the criminal act, must be medically proven; and third, the effect of the insanity is the inability to appreciate the nature and quality or wrongfulness of the act.

This Court resolves an appeal from the Decision[3] of the Court of Appeals affirming Lito Paña's (Paña) conviction for the crime of murder.

Paña was charged with murder under the following Information:

> That on or about the 20th day of March 2005, at about 7:30 o'clock in the morning at Barangay Masaya, Municipality of Rosario, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo (gulok) with intent to kill with the qualifying circumstances of treachery and evident premeditation, with abuse of superior strength and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and hack with the said bolo one Sherwin Macatangay y Lara, suddenly and without warning, thereby inflicting upon the latter incise wounds on his head and neck, which directly caused his death.
>
> Contrary to law.[4]

Upon arraignment, Paña pleaded not guilty to the charge. Trial on the merits ensued.[5]

The prosecution presented the following witnesses: (1) the victim's mother, Thelma Macatangay; (2) Aldwin Andal (Andal);

---

[2] 87 Phil. 658 (1950) [Per J. Montemayor, En Banc].

[3] *Rollo*, pp. 1-A-10. The March 13, 2014 Decision in CA-G.R. CR-HC No. 05483 was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda (now a member of this Court) and Manuel M. Barrios of the Seventeenth Division, Court of Appeals, Manila.

[4] CA *rollo*, p. 51.

[5] Id. at 52.

(3) PO3 Andres Mancia (PO3 Mancia); and (4) Municipal Health Officer Dr. Emelita Abacan (Dr. Abacan).[6]

Based on the collective testimony of its witnesses, the prosecution alleged that on March 20, 2005, Andal left his house at around 7:30 a.m. to fetch Sherwin Macatangay (Macatangay) from the latter's hut. When Andal arrived, he saw Paña hacking Macatangay with a two-foot long bolo. Macatangay was sleeping on the *katre* (bed) while he was being hacked. Afraid of what he had just witnessed, Andal immediately ran away and reported the incident to the authorities.[7]

PO3 Mancia and PO1 Ronilo Balita (PO1 Balita) were dispatched from the Rosario Police Station to proceed to the crime scene.[8] When they arrived, they saw numerous bystanders in the area. They searched the place and saw Macatangay's lifeless body. While they were conducting their on-site investigation, PO3 Mancia and PO1 Balita found Paña in a grassy lot 25 to 30 meters away from the crime scene. Paña was lying on the ground with a bolo in his hand. When Paña saw the police officers, he attempted to run but he was immediately apprehended. He was then brought to the police station.[9]

The post-mortem examination conducted by Dr. Abacan revealed that Macatangay sustained four (4) incised wounds on his head and neck, which caused his death.[10]

After the prosecution rested its case, the defense presented Paña and his mother, Soledad Paña (Soledad), as witnesses. Paña interposed the defense of insanity.

Paña claimed that he had been mentally ill since 2003 which caused him to do things he was unaware of, suffer sleepless

---

[6] *Rollo,* p. 2.

[7] CA *rollo,* pp. 52-53.

[8] Id. at 53.

[9] Id. at 54.

[10] *Rollo,* pp. 2-3.

nights, and even attempt to commit suicide twice. In one instance, he jumped from a bridge but did not suffer any injuries. He further claimed that he was mentally ill in November 2004 and January 2005. He claimed that he absolutely had no recollection of what transpired on the day of the alleged incident and that he only regained his mental faculties after his apprehension and incarceration. The quack doctor whom he had previously consulted told him that his mental illness was brought about by depression.[11]

Soledad corroborated her son's testimony. She testified that her son was having health problems before the alleged incident and was quiet and uneasy most of the time. Soledad knew that her son was not in his right mind because he would answer differently whenever she would talk to him. Due to financial constraints, they were unable to seek professional medical intervention. On the day of the alleged incident, Soledad observed that her son had a blank stare on his face ('*nakatulala*').[12]

Moreover, Soledad maintained that his son and the victim, who were close cousins, did not have any misunderstandings. When she visited her son in jail, he was allegedly still unaware of what happened and did not recognize anyone.[13]

In its Decision,[14] the Regional Trial Court found Paña guilty. The dispositive portion of its Decision reads:

> For failure to establish by convincing evidence his alleged insanity at the time that accused killed Sherwin Macatangay, the Court renders its judgment of CONVICTION and hereby sentence the accused LITO PAÑA Y INANDAN to suffer the penalty of *Reclusion Perpetua*.
>
> Furthermore, the accused LITO PAÑA Y INANDAN is directed to pay the heirs of Sherwin Macatangay y Lara the amount of Php50,000.00 as death indemnity.

---

[11] CA *rollo*, pp. 56-59.

[12] Id. at 59-60.

[13] Id. at 60.

[14] Id. at 51-64. The January 24, 2012 Decision was penned by Presiding Judge Rose Marie J. Manalang-Austria of Branch 87, Regional Trial Court, Rosario, Batangas.

SO ORDERED.[15]

The Regional Trial Court found the evidence presented by the defense insufficient to establish Paña's claim of insanity. The Regional Trial Court did not consider Paña and his mother as competent witnesses to testify on Paña's state of mind. Assuming their testimonies were given weight, it held that there was no proof that Paña was completely deprived of intelligence when the crime was committed.[16]

Paña appealed the Decision of the Regional Trial Court. In his Appellant's Brief,[17] Paña argued that expert testimony is not indispensable to prove his insanity as this may be established by the testimony of one who is intimately acquainted with him. Paña believes that his mother is the best witness to testify on his mental condition having observed his day-to-day behavior.[18]

Further, Paña argued that he had no ill motive toward the victim and there was no misunderstanding between them. Moreover, the totality of the circumstances suggests that he was unaware of what he had done: first, he killed the victim in broad daylight; second, he was found around 25 to 30 meters away from the crime scene after the incident; and lastly, he has shown no remorse.[19]

On the other hand, the People of the Philippines, through the Office of the Solicitor General, argued in its Brief[20] that Paña's guilt has been proven beyond reasonable doubt. It stated that the act of killing a sleeping victim is considered treacherous. Thus, the trial court did not err in rendering a judgment of conviction.[21]

---

[15] Id. at 63-64.

[16] Id. at 62-63.

[17] Id. at 32-48.

[18] Id. at 40-44.

[19] Id. at 44-48.

[20] Id. at 81-89.

[21] Id. at 85-86.

As regards Paña's defense of insanity, the Office of the Solicitor General argued that legal insanity requires that the accused must be "deprived of reason and act without the least discernment[.]"[22] The Office of the Solicitor General believes that the evidence presented by the defense showed that Paña only exhibited unusual behavior.[23]

The Court of Appeals affirmed Paña's conviction in its March 13, 2014 Decision.[24] Thus:

> WHEREFORE, the instant appeal is DISMISSED and the Decision dated January 24, 2012 of the Regional Trial Court of Rosario, Batangas, Branch 87, in Criminal Case No. R05-065 is AFFIRMED IN TOTO.
>
> SO ORDERED.[25]

The appellate court agreed with the Regional Trial Court that Paña and his mother were not competent witnesses to testify on Paña's alleged insanity.[26] Moreover, it found no clear evidence that would establish Paña's insanity immediately before or at the time he killed the victim. It held that the manifestations of Paña's alleged mental illness are insufficient to prove legal insanity, which requires complete deprivation of intelligence.[27]

In affirming the finding of guilt, the Court of Appeals found that the prosecution proved all the elements of murder. It held that the number of stab wounds sustained by the victim indicated Paña's intent to kill. The killing was also attended with treachery as it was done while the victim was sleeping.[28]

---

[22] Id. at 87.

[23] Id. at 86-88.

[24] *Rollo*, pp. 1-A-10.

[25] Id. at 9-10.

[26] Id. at 7-8.

[27] Id. at 8-9.

[28] Id. at 4-7.

Paña filed his Notice of Appeal[29] which was given due course by the Court of Appeals.[30] The records were then elevated to this Court.[31]

In a Resolution,[32] this Court noted the records forwarded by the Court of Appeals and required the parties to submit their respective supplemental briefs. Both parties manifested that they would no longer file their supplemental briefs.[33]

The issue for this Court's resolution is whether or not accused-appellant Lito Paña y Inandan can claim exemption from criminal liability based on the defense of insanity.

I

One of the basic moral assumptions in criminal law is that all persons are "naturally endowed with the faculties of understanding and free will."[34] When a person is charged of a crime, the act is deemed to have been committed with "deliberate intent, that is, with freedom, intelligence[,] and malice."[35]

The presumption in favor of sanity is based on practical considerations. As explained by this Court in *People v. Aquino*:[36]

> The basis for the presumption of sanity is well explained by the United States Supreme Court in the leading case of *Davis vs. United States*, in this wise: "If that presumption were not indulged, the government would always be under the necessity of adducing affirmative evidence of the sanity of an accused. But a requirement of that character would seriously delay and embarrass the enforcement

---

[29] CA *rollo*, pp. 107-109.

[30] Id. at 111.

[31] *Rollo*, p. 1.

[32] Id. at 16-17.

[33] Id. 18-27.

[34] *People v. Madarang*, 387 Phil. 846, 855 (2000) [Per J. Puno, First Division].

[35] *People v. Aldemita*, 229 Phil. 448, 31 (1986) [Per J. Narvasa, En Banc].

[36] G.R. No. 87084, June 27, 1990 [Per J. Regalado, Second Division].

of the laws against crime and in most cases be unnecessary. Consequently, the law presumes that everyone charged with crime is sane and thus, supplies in the first instance the required proof of capacity to commit crime."[37] (Citation omitted)

Since the law presumes all persons to be of sound mind, insanity is the exception rather than the general rule.[38] It is a defense in the nature of confession and avoidance.[39] In claiming insanity, an accused admits the commission of the criminal act but seeks exemption from criminal liability due to lack of voluntariness or intelligence.[40]

Under Article 12 (1) of the Revised Penal Code:

CHAPTER TWO

Justifying Circumstances and Circumstances which Exempt from Criminal Liability

ARTICLE 12. Circumstances Which Exempt from Criminal Liability. — The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.[41]

This Court defines insanity as:

a manifestation in language or conduct of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion,

---

[37] Id.

[38] *People v. Aldemita*, 229 Phil. 448 (1986) [Per J. Narvasa, En Banc].

[39] *People v. Yam-id*, 368 Phil. 131 (1999) [Per J. Melo, En Banc].

[40] *People v. Renegado*, 156 Phil. 260 (1974) [Per J. Muñoz-Palma, En Banc].

[41] REV. PEN. CODE, art. 12 (1).

inhibition, or disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition.[42]

An insane person "has an unsound mind or suffers from a mental disorder,"[43] but this Court admits that an insane person may have lucid intervals during which they may be held liable for criminal acts.[44]

Previously, the inquiry in insanity defense cases had no clear parameters. It merely posed the question of whether the accused was insane at the time they committed the offense.[45] There had been no defined standards as to what distinctly constituted insanity until 1950 when this Court, in *People v. Formigones*,[46] adopted the complete deprivation of intelligence or will test.

In *Formigones*, the accused was charged with parricide for stabbing his wife. He interposed the defense of insanity under Article 12 (1) of the Revised Penal Code, alleging that during trial, guards of the provincial jail testified that the accused exhibited strange behavior and behaved like an insane person during his incarceration.[47]

There, this Court rejected the defense of insanity. Citing decisions of the Supreme Court of Spain, it held that for an accused to be regarded as an imbecile within the contemplation of the Revised Penal Code, there must be complete deprivation of reason, discernment, or freedom of the will at the time of the commission of the crime.[48] Thus:

---

[42] *People v. Ambal*, 188 Phil. 372, 377 (1980) [Per J. Aquino, Second Division] citing 1917 REV. ADM. CODE, sec. 1039.

[43] Id.

[44] Id.

[45] *See People v. Bonoan*, 64 Phil. 87 (1937) [Per J. Laurel, First Division]; *U.S. v. Vaquilar*, 27 Phil. 88 (1914) [Per J. Trent, First Division]; *U.S. v. Guevara*, 27 Phil. 547 (1914) [Per J. Araullo, First Division]; *U.S. v. Martinez*, 34 Phil. 305 (1916) [Per J. Johnson, Second Division].

[46] 87 Phil. 658 (1950) [Per J. Montemayor, En Banc].

[47] Id. at 660.

[48] Id. at 660-662.

In order that a person could be regarded as an imbecile within the meaning of article 12 of the Revised Penal Code so as to be exempt from criminal liability, he must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime. The provisions of article 12 of the Revised Penal Code are copied from and based on paragraph 1, article 8, of the old Penal Code of Spain. Consequently, the decisions of the Supreme Court of Spain interpreting and applying said provisions are pertinent and applicable. We quote Judge Guillermo Guevara on his Commentaries on the Revised Penal Code, 4th Edition, pages 42 to 43:

> "The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment; that there be a complete absence of the power to discern, or that there be a total deprivation of freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.
>
> "The Supreme Court of Spain likewise held that deaf-muteness cannot be equalled to imbecility or insanity.
>
> "The allegation of insanity or imbecility must be clearly proved. Without positive evidence that the defendant had previously lost his reason or was demented, a few moments prior to or during the perpetration of the crime, it will be presumed that he was in a normal condition. Acts penalized by law are always reputed to be voluntary, and it is improper to conclude that a person acted unconsciously, in order to relieve him from liability, on the basis of his mental condition, unless his insanity and absence of will are proved."[49] (Citations omitted)

The formulation in *Formigones* gave rise to two distinguishable tests in determining the existence of legal insanity: (1) the test of cognition; and (2) the test of volition.[50]

---

[49] Id. at 660-661.

[50] *People v. Rafanan, Jr.*, 281 Phil. 66, 78-80 (1991) [Per J. Feliciano, First Division].

The test of cognition requires a "complete deprivation of intelligence in committing the [criminal] act" while the test of volition requires a "total deprivation of freedom of the will."[51] Despite the existence of these standards by which legal insanity can be measured, a review of jurisprudence shows more reliance on the test of cognition.[52]

This observation was echoed in *People v. Rafanan, Jr.*:[53]

A linguistic or grammatical analysis of those standards suggests that *Formigones* established two (2) distinguishable tests (a) the test of cognition — "complete deprivation of intelligence in committing the [criminal] act," and (b) the test of volition — "or that there be a total deprivation of freedom of the will." But our caselaw shows common reliance on the test of cognition, rather than on a test relating to "freedom of the will"; examination of our caselaw has failed to turn up any case where this Court has exempted an accused on the sole ground that he was totally deprived of "freedom of the will," *i.e.*, without an accompanying "complete deprivation of intelligence." This is perhaps to be expected since a person's volition naturally reaches out only towards that which is presented as desirable by his intelligence, whether that intelligence be diseased or healthy. In any case, where the accused failed to show complete impairment or loss of intelligence, the Court has recognized at most a mitigating, not an exempting, circumstance in accord with Article 13(9) of the Revised Penal Code: "Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts."[54] (Citation omitted)

As expounded in *People v. Haloc*:[55]

---

[51] Id. at 79.

[52] See *People v. Aldemita*, 229 Phil. 448 (1986) [Per J. Narvasa, En Banc]; *People v. Cruz*, 109 Phil. 288 (1960) [Per C.J. Paras, En Banc]; *People v. Rafanan, Jr.*, 281 Phil. 66 (1991) [Per J. Feliciano, First Division]; *People v. Talavera*, 413 Phil. 761 (2001) [Per J. Ynares-Santiago, En Banc]; *People v. Umawid*, 735 Phil. 737, 744-745 (2014) [Per J. Perlas-Bernabe, Second Division].

[53] 281 Phil. 66 (1991) [Per J. Feliciano, First Division].

[54] Id. at 79-80.

[55] G.R. No. 227312, September 5, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64572> [Per J. Bersamin, First Division].

> The defense of insanity rests on the test of cognition on the part of the accused. Insanity, to be exempting, requires the complete deprivation of intelligence, not only of the will, in committing the criminal act. Mere abnormality of the mental faculties will not exclude imputability. The accused must be so insane as to be incapable of entertaining a criminal intent. He must be deprived of reason, and must be shown to have acted without the least discernment because there is a complete absence of the power to discern or a total deprivation of freedom of the will.[56] (Citations omitted)

Since *Formigones*, the standard on insanity defense cases has remained the same and a low rate of acceptance of insanity persisted in our jurisdiction. The test is stringent because it requires complete deprivation of reason and intelligence. Any indication of cognition or reason before, during, or after the commission of the crime leads to a rejection of the defense. Rarely does complete deprivation of cognition get proven in court. In fact, a survey of jurisprudence shows that only two cases passed this strict standard.

In the 1996 case of *People v. Austria*,[57] it was alleged that the accused suffered from paranoid type schizophrenia, which is characterized by "unpredictable assaultiveness" and "violent and destructive behavior," among others. According to psychiatric evaluation, his auditory hallucinations recurred and he was experiencing a relapse. A week later, he allegedly had the sudden urge to have sexual intercourse with the victim after being intoxicated by 10 bottles of beer. He then went to the victim's house and when she refused to have intercourse with him, he claimed to hear the devil ordering him to stab the victim and her children. During trial, the psychiatrist testified that the accused had previously been confined and that his mental condition cannot be cured by medication.[58]

In acquitting the accused, this Court held that there was sufficient evidence showing that he was insane at the time he

---

[56] Id.

[57] 328 Phil. 1208 (1996) [Per J. Romero, Second Division].

[58] ld. at 1223-1224.

committed the crime. The Court gave weight to the fact of his previous confinement, his erratic behavior prior to the incident, and the psychiatrist's testimony which confirmed that he was having a relapse, completely depriving him of reason at the time of the incident.[59]

In the more recent case of *Verdadero v. People*,[60] decided in 2016, this Court acquitted the accused based on the testimony of his psychiatrist, who categorically claimed that the accused was diagnosed with schizophrenia. The psychiatrist further testified that the accused had several relapses in the past and, again, at the time of the stabbing incident. This was consistent with the testimony of the accused's neighbor who narrated that the accused was of unsound mind, noting that on the day of the incident he had reddish eyes and appeared drunk.[61]

In *Verdadero*, while there was no direct evidence showing the accused's mental state at the precise moment of the incident, this Court held that insanity was sufficiently proven by the circumstances immediately before and after the incident. Considering the expert testimony which is corroborated by another witness, this Court ruled that there was sufficient evidence showing that the accused was deprived of intelligence at the time of the commission of the offense.[62]

Save for *Austria* and *Verdadero*, schizophrenia, which has often been cited to support a claim of insanity, has usually never passed the test of cognition in *Formigones*. This is because schizophrenia is not automatically accompanied by loss of intelligence.[63] In *Rafanan, Jr.*:

---

[59] Id. at 1224.

[60] *Verdadero v. People*, 782 Phil. 168 (2016) [Per J. Mendoza, Second Division].

[61] Id. at 184.

[62] Id. at 185.

[63] *See People v. Aldemita*, 229 Phil. 448,460 (1986) [Per J. Narvasa, En Banc]; *People v. Puno*, 430 Phil. 449 (1981) [Per J. Aquino, En Banc]; *People v. Fausto*, 113 Phil. 841 (1961) [Per J. Barrera, Second Division].

Schizophrenia pleaded by appellant has been described as a chronic mental disorder characterized by inability to distinguish between fantasy and reality, and often accompanied by hallucinations and delusions. Formerly called *dementia praecox*, it is said to be the most common form of psychosis and usually develops between ages 15 and 30. . . .

. . . .

In previous cases where *schizophrenia* was interposed as an exempting circumstance, it has mostly been rejected by the Court. In each of these cases, the evidence presented tended to show that if there was impairment of the mental faculties, such impairment was not so complete as to deprive the accused of intelligence or the consciousness of his acts.[64] (Emphasis in the original, citations omitted)

Complete deprivation of intelligence has been equated to "defect of the understanding"[65] such that the accused must have "no full and clear understanding of the nature and consequences of [their] acts."[66] Deprivation of intelligence, however, is not a symptom of every mental illness. In *People v. Opuran*:[67]

Insanity is evinced by a deranged and perverted condition of the mental faculties which is manifested in language and conduct. However, not every aberration of the mind or mental deficiency constitutes insanity. As consistently held by us, "A man may act crazy, but it does not necessarily and conclusively prove that he is legally so." Thus, we had previously decreed as insufficient or inconclusive proof of insanity certain strange behavior, such as, taking 120 cubic centimeters of cough syrup and consuming three sticks of marijuana before raping the victim; slurping the victim's blood and attempting to commit suicide after stabbing him; crying, swimming

---

[64] *People v. Rafanan, Jr.*, 281 Phil. 66, 80-85 (1991) [Per J. Feliciano, First Division].

[65] *People v. Madarang*, 387 Phil. 846, 859 (2000) [Per J. Puno, First Division].

[66] *People v. Umawid*, 735 Phil. 737, 745 (2014) [Per J. Perlas-Bernabe, Second Division]; *People v. Villa, Jr.*, 387 Phil. 155, 162-165 (2000) [Per J. Bellosillo, Second Division].

[67] 469 Phil. 698 (2004) [Per C.J. Davide, Jr., First Division].

in the river with clothes on, and jumping off a jeepney.[68] (Citations omitted)

Feeblemindedness has also been rejected by this Court as sufficient basis to support a claim of insanity.[69] In *Formigones*, the accused was not deemed insane as he was not completely deprived of reason at the time he committed the offense and could still distinguish right from wrong. Even his past conduct did not indicate that he was mentally ill:

> He regularly and dutifully cultivated his farm, raised five children, and supported his family and even maintained in school his children of school age, with the fruits of his work. Occasionally, as a side line he made copra. And a man who could feel the pangs of jealousy and take violent measures to the extent of killing his wife whom he suspected of being unfaithful to him, in the belief that in doing so he was vindicating his honor, could hardly be regarded as an imbecile. Whether or not his suspicions were justified, is of little or no import. The fact is that he believed her faithless.[70]

II

The complete deprivation of intelligence or will test originated from the old English concept of "wild beast test," which likens defendants to wild beasts due to their "complete lack of understanding" of their actions.[71] English jurisprudence held that to be insane, an accused "must be totally deprived of his understanding and memory so as not to know what he is doing, no more than an infant, brute or a wild beast."[72] This test placed more emphasis on the accused's cognitive capacity rather than

---

[68] Id. at 712.

[69] *People v. Formigones*, 87 Phil. 658, 661-663 (1950) [Per J. Montemayor, En Banc].

[70] Id. at 662.

[71] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 6 (1st ed., 2008).

[72] Id.

impulses, and raised the criteria which effectively reduced the rate of acquittal in insanity defense cases.[73]

Several other tests were developed in various jurisdictions. The most prominent of these tests is the *M'Naghten* Rule.

Under the *M'Naghten* Rule, the defense of insanity would only prosper if there is sufficient evidence that at the time the offense was committed, the accused was unaware of "the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."[74]

Like the wild beast test, the English Court also formulated the *M'Naghten* Rule. In that case, accused Daniel M'Naghten shot Edward Drummond dead, mistaking him for UK Prime Minister Robert Peel. M'Naghten was proven to have been suffering from morbid delusions, convincing himself that the Prime Minister will kill him. The Court acquitted him on the ground of insanity and gave credence to evidence which pointed out that due to his delusions, he was unable to distinguish between right and wrong and was incapable of controlling his conduct in connection with the delusion.[75]

The *M'Naughten* Rule was promptly adopted by most United States state courts.[76] However, the test was criticized for its ambiguity, raising debates whether the term *wrong* qualifies as moral or legal wrong.[77] Moreover, it was disapproved for its

---

[73] GABRIEL HALLEVY, THE MATRIX OF INSANITY IN MODERN CRIMINAL LAW 7 (1st ed., 2015); Gerald Robin, *The Evolution of the Insanity Defense*, 13 JOURNAL OF CONTEMPORARY CRIMINAL JUSTICE 224, 225 (1997).

[74] *People v. Ambal*, 188 Phil. 372 (1980) [Per J. Aquino, Second Division].

[75] Id. at 380.

[76] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 7 (1st ed., 2008).

[77] *People v. Madarang*, 387 Phil. 846, 856-857 (2000) [Per J. Puno, First Division]; *People v. Ambal*, 188 Phil. 372-383 (1980) [Per J. Aquino, Second Division].

confined focus on cognitive impairment, which totally disregards an accused's ability to control their behavior.[78]

As a response to the criticism towards the *M'Naghten* Rule, the *irresistible impulse test* was formulated in the United States.[79] This test focuses on a person's volition and the causation between the mental illness and the resulting conduct, removing the element of free will in the commission of the crime.[80]

The irresistible impulse test provides that even if the accused was aware of the nature and quality of the criminal act, they would nevertheless be exempted from criminal liability if it is proven that the accused "has been deprived of or lost the power of his will[.]"[81] The accused must have either lost control of their conduct or failed to resist the impulse to commit the crime.[82] However, this test has been criticized because it is too restrictive[83] and because an irresistible attack can be easily feigned.[84]

The third test, known as the *Durham Product Test*, puts more emphasis on the acts produced by a person who is suffering from a mental disease. Proponents of this test postulate that all acts resulting from a mental disease are not criminal. An accused may be exonerated from criminal liability if his or her "unlawful act was the product of mental disease or defect." Critics, however, consider the application of this rule too broad.[85] The vagueness

---

[78] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 7 (1st ed., 2008).

[79] Id.

[80] Id.

[81] *People v. Madarang*, 387 Phil. 846, 856 (2000) [Per J. Puno, First Division].

[82] Id. at 856-857.

[83] Id. at 857.

[84] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 7 (1st ed., 2008).

[85] *People v. Madarang*, 387 Phil. 846, 857-858 (2000) [Per J. Puno, First Division].

of the terms "mental disease or defect" and "product" resulted to confusion and circuitous disputes on legal and medical jargons.[86]

The fourth test is the *substantial capacity test*, otherwise known as the *American Law Institute (ALI) Standard*. It is a species of the *M'Naghten* Rule and the irresistible impulse test.

The substantial capacity test provides that an accused suffering from a mental disease or defect is not criminally liable if they "[lack] substantial capacity to appreciate the criminality of [their] act or to conform [their] conduct to the requirements of the law."[87]

However, critics questioned the substantial capacity test's volitional prong (i.e., to conform the conduct to the law), which was seen as a step back from *M'Naghten* Rule's volition requirement.[88] As a result, a new test was recommended and later adopted by the United States in the Insanity Defense Reform Act of 1984.[89]

Under the Insanity Defense Reform Act, a defendant is not criminally liable if "at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality of the wrongfulness of his acts."[90] Thus, the law eliminated the volition prong of the insanity defense.[91]

The Insanity Defense Reform Act introduced three changes: first, it restricted the standard of insanity in *M'Naghten* Rule;

---

[86] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 7 (1st ed., 2008).

[87] *People v. Madarang*, 387 Phil. 846, 858 (2000) [Per J. Puno, First Division].

[88] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 7 (1st ed., 2008).

[89] Id.

[90] The Federal Insanity Defense Reform Act, <https://criminallaw.uslegal.com/defense-of-insanity/current-application-of-the-insanity-defense/the-federal-insanity-defense-reform-act/> visited September 18, 2020).

[91] *U.S. v. Freeman*, 804 F.2d 1574, 1575 (11th Cir. 1986).

second, it shifted the burden of proof to the defendant; and third, it prohibited experts from testifying with respect to the ultimate legal issue of whether the defendant was insane at the time of the commission of the crime.[92]

Several jurisdictions have adopted standards similar to the formulation in the *M'Naghten* Rule and Insanity Defense Reform Act.

In Canada, the insanity defense may prosper if the accused committed the crime "while suffering from mental disorder that rendered [him or her] incapable of appreciating the nature and the quality of an act or omission or of knowing that it was wrong."[93] Similarly, the Criminal Code of Germany exempts an accused from criminal responsibility "if at the time of the act, because of a psychotic, or similar serious mental disorder, or because of a profound interruption of consciousness or because of feeblemindedness or any other type of serious mental abnormality, he is incapable of understanding the wrongfulness of his conduct or of action in accordance with his understanding."[94] In Spain, an accused will be exempt from criminal responsibility if "because of mental disease or defect

---

[92] Eric Collins, *Insane: James Holmes, Clark v. Arizona, and America's Insanity Defense*, 31 J.L. & HEALTH 33, 42 (2018).

[93] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 15 (1st ed., 2008) citing the Criminal Code of Canada (RSC) C-46, 16 (1), which provides:

> No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

[94] RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER 73 (1st ed., 2008) citing the Criminal Code (StGB) of Federal Republic of Germany, sec. 20, which provides:

> A person is not criminally responsible if at the time of the act, because of a psychotic or similar serious mental disorder, or because of a profound interruption of consciousness or because of feeblemindedness or any other type of serious mental abnormality, he is incapable of understanding the wrongfulness of his conduct or of action in accordance with his understanding.

he was not able to comprehend the illegality of his act or conform his conduct to the mandates of the law."[95]

Other jurisdictions likewise exempt insane persons from criminal responsibility if the accused, as a result of the mental illness, was unable to recognize or understand the wrongfulness or consequences of the act.[96]

In our jurisdiction, the more stringent test formed in *Formigones* remained the standard in determining insanity.[97] Nevertheless, tests other than the formulation in *Formigones* are suppletorily used by this Court to determine whether there was complete deprivation of intelligence in the commission of the crime.

In a number of cases, this Court resolved insanity cases by ascertaining whether the accused was aware of their acts' wrongfulness. For instance, immediate surrender to the authorities,[98] escaping arrest,[99] display of remorse,[100] and threatening the victim to avoid getting caught[101] have been

---

[95] LUIS E. CHIESCA, ET AL., THE HANDBOOK OF COMPARATIVE CRIMINAL LAW 36-37 (1st ed., 2008).

[96] *See* RITA J. SIMON AND HEATHER AHN-REDDING, THE INSANITY DEFENSE, THE WORLD OVER (1st ed., 2008). It was discussed how countries such as Hungary, Israel, India, and Australia resolve legal insanity based on whether the accused understood the nature and wrongfulness of their acts.

[97] *People v. Madarang*, 387 Phil. 846 (2000) [Per J. Puno, First Division].

[98] *People v. Ambal*, 188 Phil. 372 (1980) [Per J. Aquino, Second Division].

[99] *People v. Valledor*, 433 Phil. 158 (2002) [Per J. Ynares-Santiago, First Division]; *People v. Belonio*, 473 Phil. 637 (2004) [Per Curiam, En Banc]; *People v. Arevalo, Jr.*, 466 Phil. 419 (2004) [Per J. Panganiban, En Banc].

[100] *People v. Magallano*, 188 Phil. 558 (1980) [Per Acting C.J. Teehankee, First Division]; *People v. Robiños*, 432 Phil. 322 (2002) [Per J. Panganiban, En Banc].

[101] *People v. Rafanan, Jr.*, 281 Phil. 66, 85 (1991) [Per J. Feliciano, First Division].

considered proof that the accused knew the nature and culpability of their acts.[102]

In *People v. Ambal*,[103] using the *Formigones* Test, this Court concluded that the presumption of sanity was not overthrown by evidence, and that the accused was "not completely bereft of reason or discernment and freedom of will" when he killed his wife. This Court cited how the accused knew and understood the wrongfulness and consequences of his conduct when he thought of surrendering to the authorities.[104]

Similarly, in *People v. Rafanan, Jr.*,[105] this Court ruled that a showing that the accused understood the wrongfulness of his act determines that he was not completely deprived of intelligence. That the accused threatening the victim with death indicates that the accused was aware of the reprehensibility of his act.[106]

III

Under our current rule, complete deprivation of intelligence or reason at the time of the commission of the crime is an assertion which must be proven beyond reasonable doubt.

Insanity relates to a person's state of mind. However, a person's motivations, thoughts, and emotions are only manifested through overt acts.[107] Courts, therefore, can only consider evidence relating to the behavioral patterns of the accused to

---

[102] *See People v. Tabugoca*, 349 Phil. 236 (1998) [Per Curiam, En Banc]; *People v. Diaz*, 377 Phil. 997 (1999) [Per J. Bellosillo, En Banc]; *People v. Cayetano*, 341 Phil. 817 (1997) [Per J. Romero, Second Division]; *People v. Comanda*, 553 Phil. 655 (2007) [Per J. Tinga, Second Division].

[103] *People v. Ambal*, 188 Phil. 372 (1980) [Per J. Aquino, Second Division].

[104] Id. at 382.

[105] *People v. Rafanan, Jr.*, 281 Phil. 66 (1991) [Per J. Feliciano, First Division].

[106] Id. at 85.

[107] *People v. Bonoan*, 64 Phil. 87 (1937) [Per J. Laurel, First Division].

determine whether they are legally insane. In *People v. Madarang*:[108]

> The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior.[109]

The complete deprivation of intelligence must be manifested at the time "preceding the act under prosecution or to the very moment of its execution."[110] Thus, courts admit evidence or proof of insanity which relate to the time immediately before, during, or after the commission of the offense.[111] In *People v. Dungo*:[112]

> Evidence of insanity must have reference to the mental condition of the person whose sanity is in issue, at the very time of doing the act which is the subject of inquiry. However, it is permissible to receive evidence of his mental condition for a reasonable period both before and after the time of the act in question.[113]

Because our current rule requires complete deprivation of intelligence, the slightest sign of reason before, during, or after the commission of the crime instantly overthrows the insanity defense.

This is despite the wording of our penal law and recognition in our jurisprudence that an insane person's mental condition is not static and that they may experience lucid intervals from

---

[108] 387 Phil. 846 (2000) [Per J. Puno, First Division].

[109] Id. at 859.

[110] *People v. Aldemita*, 229 Phil. 448, 456 (1986) [Per J. Narvasa, En Banc]; *People v. Umawid*, 735 Phil. 737, 744 (2014) [Per J. Perlas-Bernabe, Second Division].

[111] *People v. Madarang*, 387 Phil. 846, 859 (2000) [Per J. Puno, First Division].

[112] 276 Phil. 955 (1991) [Per J. Paras, Second Division].

[113] Id. at 964.

time to time.[114] This is especially critical in our jurisdiction where insanity defense is mostly claimed based on mental disorders with active-phase symptoms such as schizophrenia.[115]

Further, complete deprivation of intelligence is a concept born of a medieval view of mental illnesses which rejects the psychodynamic nature of human psychology.[116] It fails to acknowledge that mental illnesses exist in a spectrum and the all-or-nothing notion of mental illnesses reflects our legal system's detachment from established and contemporary concepts of mental health.[117]

Persons who suffer from mental illnesses and disorders are no longer viewed as wild beasts who are absolutely devoid of mental faculties. The diagnosis and studies on mental illnesses and disorders have progressed since. Attitude and views toward mental health have significantly evolved. Tests have been recalibrated and reformulated to better deal with the peculiarity and contours of insanity defense cases — tests whose merits are now recognized by this Court.

IV

This Court in *People v. Bascos*[118] began the query on the appropriate quantum of evidence for insanity defense to prosper. *Bascos* observed the prevailing conflict of authority in fixing the quantum of evidence required from the defense in insanity cases. It held that whatever the quantum is, it must be in harmony with two fundamental and basic criminal law propositions, specifically: (1) that the prosecution bears the burden to establish

---

[114] REV. PEN. CODE, art. 12 (1); *People v. Ambal*, 188 Phil. 372-383 (1980) [Per J. Aquino, Second Division].

[115] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 89 (5th ed., 2013).

[116] Michael L. Perlin, *Psychodynamics and the Insanity Defense: "Ordinary Common Sense" and Heuristic Reasoning*, 69 NEB. L. REV 3, 5 (1990).

[117] Id. at 5.

[118] *People v. Bascos*, 44 Phil. 204 (1922) [Per J. Malcolm, First Division].

the commission of the crime with proof beyond reasonable doubt; and (2) that there is a presumption in favor of sanity.[119]

However, *Bascos* did not categorically state the quantum of evidence required to prove insanity. It discussed:

> The responsibility of the insane for criminal action has been the subject of discussion for centuries. Some criminologists, psychiatrists, and lawyers have contended with much earnestness that the defense of insanity should be done away with completely. Indeed, in at least one State of the American Union, that of the State of Washington, the Legislature has passed a statute abolishing insanity as a defense.
>
> In the Philippines, among the persons who are exempted from criminal liability by our Penal Code, is the following:
>
> > "An imbecile or lunatic, unless the latter has acted during a lucid interval.
> >
> > "When the imbecile or lunatic has committed an act which the law defines as a grave felony, the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court." (Art. 8-1)
>
> Article 100 of the Penal Code applies when the convict shall become insane or an imbecile after final sentence has been pronounced.
>
> In reference to the burden of proof of insanity in criminal cases, where the defense of insanity is interposed, a conflict of authority exists. At least, all the authorities are in harmony with reference to two fundamental propositions: First, that the burden is on the prosecution to prove beyond a reasonable doubt the defendant committed the crime; and secondly, that the law presumes every man to be sane. The conflict in the decisions arises by reason of the fact that the courts differ in their opinion as to how much evidence is necessary to overthrow this original presumption of sanity, and as to what quantum of evidence is sufficient to enable the court to say that the burden of proving the crime beyond a reasonable doubt has been sufficiently borne. (14 R. CL., 624.)
>
> The rather strict doctrine "that when a defendant in a criminal case interposes the defense of mental incapacity, the burden of

[119] Id. at 206.

establishing that fact rests upon him," has been adopted in a series of decisions by this court. (*U. S. vs. Martinez* [1916], 34 Phil., 305; *U.S. vs. Hontiveros Carmona* [1910], 18 Phil., 62.) The trial judge construed this to mean that the defense must prove that the accused was insane at the very moment the crime was committed.[120]

People v. Bonoan[121] provided a more refined discussion on the matter. *Bonoan* examined three different theories in other jurisdictions. One theory posits that insanity must be proven beyond reasonable doubt, while another suggests that only a preponderance of evidence is required. A more liberal view considers a person's sanity as an essential element of a crime. As such, the prosecution must establish an accused's sanity beyond reasonable doubt.[122]

Bonoan leaned towards the first and stricter view, requiring proof beyond reasonable doubt to show insanity:

> On the question of insanity as a defense in criminal cases, and the incidental corollaries as to the legal presumption and the kind and quantum of evidence required, theories abound and authorities are in sharp conflict. Stated generally, courts in the United States proceed upon three different theories. *The first view is that insanity as a defense in a confession and avoidance and as such must be proved beyond a reasonable doubt. When the commission of a crime is established, and the defense of insanity is not made out beyond a reasonable doubt, conviction follows. In other words, proof of insanity at the time of committing the criminal act should be clear and satisfactory in order to acquit the accused on the ground of insanity.* The second view is that an affirmative verdict of insanity is to be governed by a preponderance of evidence, and in this view, insanity is not to be established beyond a reasonable doubt. According to Wharton in his "Criminal Evidence," this is the rule in England, and in Alabama, Arkansas, California, Georgia, Idaho, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia and West Virginia. The third view is that the

---

[120] Id. at 205-206.

[121] 64 Phil. 87 (1973) [Per J. Laurel, First Division].

[122] Id. at 91-93.

prosecution must prove sanity beyond a reasonable doubt. This liberal view is premised on the proposition that while it is true that the presumption of sanity exists at the outset, the prosecution affirms every essential ingredients of the crime charged, and hence affirms sanity as one of such essential ingredients, and that a fortiori where the accused introduces evidence to prove insanity it becomes the duty of the State to prove the sanity of the accused beyond a reasonable doubt.

In the Philippines, we have approximated the first and stricter view. The burden, to be sure, is on the prosecution to prove beyond a reasonable doubt that the defendant committed the crime, but sanity is presumed, and ". . . when a defendant in a criminal case interposes the defense of mental incapacity, the burden of establishing that fact rests upon him. . . ." We affirm and reiterate this doctrine.[123] (Emphasis supplied, citations omitted)

The subsequent case of *Dungo* is more straightforward:

Generally, in criminal cases, every doubt is resolved in favor of the accused. However, in the defense of insanity, doubt as to the fact of insanity should be resolved in favor of sanity. The burden of proving the affirmative allegation of insanity rests on the defense. Thus:

> "In considering the plea of insanity as a defense in a prosecution for crime, the starting premise is that the law presumes all persons to be of sound mind. (Art. 800, Civil Code; *U.S. v. Martinez*, 34 Phil. 305) Otherwise stated, the law presumes all acts to be voluntary, and that it is improper to presume that acts were done unconsciously (*People v. Cruz*, 109 Phil. 288) . . . Whoever, therefore, invokes insanity as a defense has the burden of proving its existence. (*U.S. v. Zamora*, 52 Phil. 218)"

The quantum of evidence required to overthrow the presumption of sanity is proof beyond reasonable doubt. Insanity is a defense in a confession and avoidance, and as such must be proved beyond reasonable doubt. Insanity must be clearly and satisfactorily proved in order to acquit an accused on the ground of insanity. Appellant has not successfully discharged the burden of overcoming the

---

[123] Id.

presumption that he committed the crime as charged freely, knowingly, and intelligently.[124] (Emphasis supplied)

This threshold was applied in later cases.[125] Inevitably, this made proving insanity more rigorous.

However, while there were cases that required proof beyond reasonable doubt, this Court, in several instances, digressed and only demanded clear and convincing evidence to prove insanity.[126] In *People v. Austria*:

> In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of his mental condition during a reasonable period before and after. Direct testimony is not required nor are specific acts of disagreement essential to establish insanity as a defense. A person's mind can only be plumbed or fathomed by external acts. Thereby his thoughts, motives and emotions may be evaluated to determine whether his external acts conform to those of people of sound mind. *To prove insanity, clear and convincing circumstantial evidence would suffice.*

---

[124] *People v. Dungo*, 276 Phil. 955-969 (1991) [Per J. Paras, Second Division].

[125] *See People v. Danao*, 290 Phil. 296 (1992) [Per J. Nocon, Second Division]; *People v. Cordova*, 296 Phil. 163 (1993) [Per J. Davide, Jr., Third Division]; *People v. Yam-id*, 368 Phil. 131 (1999) [Per J. Melo, En Banc]; *People v. Domingo*, 599 Phil. 589 (2009) [Per J. Chico-Nazario, Third Division].

[126] *See People v. Robiños*, 432 Phil. 322 (2002) [Per J. Panganiban, En Banc]; *People v. Florendo*, 459 Phil. 470 (2003) [Per J. Bellosillo, En Banc]; *People v. Tibon*, 636 Phil. 521 (2010) [Per J. Velasco, Jr., First Division]; *People v. Bulagao*, 674 Phil. 535 (2011) [Per J. Leonardo-De Castro, First Division]; *People v. Isla*, 699 Phil. 256 (2012) [Per J. Mendoza, Third Division]; *People v. Umawid*, 735 Phil. 737 (2014) [Per J. Perlas-Bernabe, Second Division]; *Verdadero v. People*, 782 Phil. 168 (2016) [Per J. Mendoza, Second Division]; *People v. Roa*, 807 Phil. 1003 (2017) [Per J. Velasco, Jr, Third Division]; *People v. Pantoja*, 821 Phil. 1052 (2017) [Per J. Martires, Third Division]; *People v. Haloc*, G.R. No. 227312, September 5, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64572> [Per J. Bersamin, First Division]; and *People v. Miraña*, 831 Phil. 215 (2018) [Per J. Martires, Third Division].

Under present-day American jurisprudence, the states have a variety of rules regarding who hears the burden of proof in insanity defense cases. Many states and the federal government have placed the burden on the defendant to prove legal insanity by a preponderance of evidence. This is now the majority rule.[127] (Emphasis supplied, citations omitted)

Similarly, in *People v. Tibon*:[128]

While Art. 12 (1) of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless that person has acted during a lucid interval, the presumption, under Art. 800 of the Civil Code, is that every human is sane. *Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence.* It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity.[129] (Emphasis supplied, citations omitted)

The rule must be clarified and rationalized.

An accused interposing the insanity defense admits the commission of the crime which would otherwise engender criminal liability. However, the accused pleas for acquittal due to lack of freedom, intelligence, or malice. In doing so, the defense must prove insanity. However, the shift of burden from the prosecution to defense does not necessarily mean shifting the same quantum of evidence because the allegation sought to be proven are different.

Verily, insanity is not an element of the crime that should be demonstrated with proof beyond reasonable doubt. The defense only bears the burden of disputing the presumption of sanity. Ultimately, the defense must proffer evidence of insanity sufficient to overcome the presumption. This quantum of evidence is not necessarily proof beyond reasonable doubt.

---

[127] *People v. Austria*, 328 Phil. 1208 (1996) [Per J. Romero, Second Division].

[128] 636 Phil. 521 (2010) [Per J. Velasco, Jr., First Division].

[129] Id. at 530-531.

Moreover, proof of defense, mitigation, excuse, or justification in criminal cases need not be proven beyond reasonable doubt.[130]

In criminal cases involving pleas in the nature of confession and avoidance, clear and convincing evidence is sufficient to acquit the accused. For instance, defendants interposing self-defense are only required to demonstrate self-defense by clear and convincing evidence.[131] In cases where the justifying circumstance of defense of strangers is invoked, this Court likewise only requires proof by clear and convincing evidence.[132] The same quantum of evidence applies to cases where the defense of state of necessity is invoked.[133] Likewise, proof of other exempting circumstances only requires clear and convincing evidence.[134]

The disparity in the quantum of evidence applied in insanity defenses vis-à-vis other defenses of avoidance and confession does not support any clear judicial policy. It simply imposes a standard more stringent on defendants who are not in full control of their faculties. As we remarked in *Verdadero*:

The expectations of a person possessed with full control of his faculties differ from one who is totally deprived thereof and is unable

---

[130] *See People v. Embalido*, 58 Phil. 152 (1933) [Per J. Abad-Santos, En Banc].

[131] See *People v. Talaboc, Jr.*, 140 Phil. 485 (1969) [Per J. Sanchez, En Banc]; *People v. Berio*, 59 Phil. 533 (1934) [Per J. Diaz, Second Division]; *People v. Hisugan*, 201 Phil. 836 (1982) [Per J. Relova, First Division]; *People v. Gelera*, 343 Phil. 225 (1997) [Per J. Puno, Second Division]; *Galang v. Court of Appeals*, 381 Phil. 145 (2000) [Per J. Pardo, First Division]; *People v. Atienza*, 201 Phil. 844 (1982) [Per J. Relova, Second Division].

[132] *Almeda v. Court of Appeals*, 336 Phil. 621 (1997) [Per J. Francisco, Third Division]; *Masipequiña v. Court of Appeals*, 257 Phil. 710 (1989) [Per J. Cortes, First Division]; *People v. Olarbe*, G.R. No. 227421, July 23, 2018, 873 SCRA 318 [Per J. Bersamin, Third Division].

[133] *People v. Retubado*, 463 Phil. 51 (2003) [Per J. Callejo, Sr., Second Division].

[134] *People v. Castillo*, 553 Phil. 197 (2007) [Per J. Ynares-Santiago, Third Division].

to exercise sufficient restraint on his. Thus, it is but reasonable that the actions made by the latter be measured under a lesser stringent standard than that imposed on those who have complete dominion over their mind, body and spirit.[135]

Therefore, the quantum of evidence in proving the accused's insanity should no longer be proof beyond reasonable doubt, but clear and convincing evidence.

Jurisprudence is witness to the strong suspicion against the insanity defense, with cases remarking that the State must zealously guard against those who feign mental illness to avoid punishment.[136] This suspicion may be attributed to the perceived invisibility of mental illnesses[137] and mistrust of diagnoses.[138]

However, one of the main policy rationales of the insanity defense is the assurance that mentally-ill persons who have violent tendencies be released only when they no longer pose threat to society. Acquittal by reason of insanity puts a restraint on mentally-ill defendants by sending them to rehabilitative facilities for proper psychiatric care. By placing an unreasonably high bar for acceptance of insanity defenses, this policy is defeated because the accused's subsequent release on parole not only poses a threat to society, but also robs them of their needed medical treatment.[139]

---

[135] *Verdadero v. People*, 782 Phil. 168, 170-171 (2016) [Per J. Mendoza, Second Division].

[136] *See People v. Dungo*, 276 Phil. 955 (1991) [Per J. Paras, Second Division]; *People v. Yam-id*, 368 Phil. 131 (1999) [Per J. Melo, En Banc]; *People v. Bonoan*, 64 Phil. 87 (1937) [Per J. Laurel, First Division]; *People v. Ambal*, 188 Phil. 372 (1980) [Per J. Aquino, Second Division]; *People v. Florendo*, 459 Phil. 470 (2003) [Per J. Bellosillo, En Banc].

[137] Julie E. Grachek, *The Insanity Defense in the Twenty-First Century: How Recent United States Supreme Court Case Law Can Improve the System*, 81 INDIANA LAW JOURNAL 1479, 1487 (2006).

[138] Nancy Haydt, *The DSM-5 and Criminal Defense: When Does a Diagnosis Make a Difference?*, 2015 UTAH LAW REVIEW 847, 848 (2015).

[139] Julie E. Grachek, *The Insanity Defense in the Twenty-First Century: How Recent United States Supreme Court Case Law Can Improve the System*, 81 INDIANA LAW JOURNAL 1479, 1490 (2006).

Clarifying guidelines with respect to the legal insanity standard and the quantum of evidence requirement is apt to enable courts to effectively determine which defendants are indeed in need of appropriate psychiatric treatment.

V

Insanity, as an exempting circumstance, must be shown medically, unless there are extraordinary circumstances and there is no other evidence available. Our procedural rules allow ordinary witnesses to testify on the "mental sanity of a person with whom [they are] sufficiently acquainted,"[140] but reports and evaluation from medical experts have greater evidentiary value in determining an accused's mental state.[141] The nature and degree of an accused's mental illness can be best identified by medical experts equipped with specialized knowledge to diagnose a person's mental health.[142]

For instance, *People v. Puno*[143] rejected the insanity defense after the Court considered the testimonies of three psychiatrists who testified that accused acted with discernment. Two of them declared that the accused was already an outpatient who is aware of what he is doing and that he can adapt to society even though he was afflicted with schizophrenic reaction. Another psychiatrist noted that the accused was not suffering from delusion and that he could distinguish right from wrong.

In *Austria*, as discussed earlier, this Court took into account the testimony of a medical expert who stated that the accused was having relapse. In acquitting the accused:

> The Court is convinced that the testimonial and documentary evidence marshalled in this case by acknowledged medical experts have sufficiently established the fact that appellant was legally insane

---

[140] RULES OF COURT, Rule 130, sec. 50 (c).

[141] See *People v. Austria*, 328 Phil. 1208 (1996) [Per J. Romero, Second Division].

[142] *People v. Estrada*, 389 Phil. 216 (2000) [Per J. Puno, En Banc].

[143] 192 Phil. 430 (1981) [Per J. Aquino, En Banc].

at the time he committed the crimes. His previous confinements, as early as 1972, his erratic behavior before the assaults and Dr. Della's testimony that he was having a relapse all point to a man deprived of complete freedom of will or a lack of reason and discernment that should thus exempt him from criminal liability.[144]

Nevertheless, a diagnosis of mental illness does not instantly resolve a legal question. A finding based on the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), a widely-accepted manual of mental disorders, does not necessarily evince a finding of legal insanity.[145] For instance, pedophilic disorder is defined by DSM-5 but it is not recognized in our jurisdiction as basis for legal insanity.[146] Hence, evidence from experts and studies can inform courts of the accused's "cognitive impairment, perceptual problems, behavioral limitations, communication difficulties, and sensory dysfunction."[147] These factors may aid the courts to understand the accused's decisional and cognitive capabilities.[148]

This Court realizes the difficulty and additional burden on the accused to seek psychiatric diagnosis. Therefore, judges must be given leeway to order the mental examination of the accused either through discovery procedures or as an incident of trial.

The conduct of mental examination is imperative not only to aid the courts but to determine the accused's mental fitness to participate in trial. This is crucial to accord due process to the accused. In *People v. Estrada*:[149]

---

[144] *People v. Austria*, 328 Phil. 1208 (1996) [Per J. Romero, Second Division].

[145] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 25 (5th ed. 2013).

[146] CHARLES SCOTT, DSM-5 AND THE LAW 136-137 (1st. ed. 2015).

[147] Nancy Haydt, *The DSM-5 and Criminal Defense: When Does a Diagnosis Make a Difference?* 2015 UTAH LAW REVIEW 847, 856 (2015).

[148] Id.

[149] 389 Phil. 216 (2000) [Per J. Puno, En Banc].

To put a legally incompetent person on trial or to convict and sentence him is a violation of the constitutional rights to a fair trial and due process of law; and this has several reasons underlying it. For one, the accuracy of the proceedings may not be assured, as an incompetent defendant who cannot comprehend the proceedings may not appreciate what information is relevant to the proof of his innocence. Moreover, he is not in a position to exercise many of the rights afforded a defendant in a criminal case, e.g., the right to effectively consult with counsel, the right to testify in his own behalf, and the right to confront opposing witnesses, which rights are safeguards for the accuracy of the trial result. Second, the fairness of the proceedings may be questioned, as there are certain basic decisions in the course of a criminal proceeding which a defendant is expected to make for himself, and one of these is his plea. Third, the dignity of the proceedings may be disrupted, for an incompetent defendant is likely to conduct himself in the courtroom in a manner which may destroy the decorum of the court. Even if the defendant remains passive, his lack of comprehension fundamentally impairs the functioning of the trial process. A criminal proceeding is essentially an adversarial proceeding. If the defendant is not a conscious and intelligent participant, the adjudication loses its character as a reasoned interaction between an individual and his community and becomes an invective against an insensible object. Fourth, it is important that the defendant knows why he is being punished, a comprehension which is greatly dependent upon his understanding of what occurs at trial. An incompetent defendant may not realize the moral reprehensibility of his conduct. The societal goal of institutionalized retribution may be frustrated when the force of the state is brought to bear against one who cannot comprehend its significance.[150] (Citations omitted)

While the conduct of mental examination rests upon the discretion of the trial court, this Court may remand the case and order an examination when there are overwhelming indications that the accused is not in the proper state of mind.[151] Among the factors that may be considered is "evidence of the defendant's irrational behavior, history of mental illness or

---

[150] Id. at 237-238.

[151] *People v. Estrada*, 389 Phil. 216 (2000) [Per J. Puno, En Banc]. *See also People v. Serafica*, 139 Phil. 589 (1969) [Per J. Dizon, En Banc].

behavioral abnormalities, previous confinement for mental disturbance, demeanor of the defendant, and psychiatric or even lay testimony bearing on the issue of competency in a particular case."[152]

In *Estrada*, this Court ordered the accused's mental examination after finding that he was deprived of fair trial. In that case, the trial court denied the motions of the defense to suspend the arraignment due to the accused's inability to intelligently enter a plea and to place the accused in an institution. It also ignored the jail warden's request to allow the accused's confinement due to his unusual behavior. Moreover, the defense waived the accused's right to testify due to his mental illness.[153]

Despite these indications, the trial court found that the accused was competent to stand trial because he answered the judge's questions. This Court held that this is not a sufficient finding of the accused's mental capacity and, considering the circumstances of the case, the trial court should have ordered the examination to determine the accused's competency to stand trial.[154] Underscoring the importance of medical diagnoses, this Court held:

> The human mind is an entity, and understanding it is not purely an intellectual process but depends to a large degree upon emotional and psychological appreciation. Thus, an intelligent determination of an accused's capacity for rational understanding ought to rest on a deeper and more comprehensive diagnosis of his mental condition than laymen can make through observation of his overt behavior. Once a medical or psychiatric diagnosis is made, then can the legal question of incompetency be determined by the trial court. By this time, the accused's abilities may be measured against the specific demands a trial will make upon him.[155] (Citations omitted)

---

[152] Id. at 238.

[153] Id. at 241.

[154] Id. at 242.

[155] Id. at 241.

VI

Considering the foregoing, we clarify the guidelines laid down in *Formigones*. Under this test, the insanity defense may prosper if: (1) *the accused was unable to appreciate the nature and quality or the wrongfulness of his or her acts;* (2) *the inability occurred at the time of the commission of the crime;* and (3) *it must be as a result of a mental illness or disorder*.

We now use a three-way test: first, insanity must be present at the time of the commission of the crime; second, insanity, which is the primary cause of the criminal act, must be medically proven; and third, the effect of the insanity is the inability to appreciate the nature and quality or wrongfulness of the act.

In this case, the defense failed to satisfy the tests.

Here, although the accused and his mother were presented as witnesses to prove accused-appellant's insanity, the only witness who may be considered competent to testify on the accused's state of mind is the accused's mother, Soledad. An accused whose mental condition is under scrutiny cannot competently testify on their state of insanity. An insane person would naturally have no understanding or recollection of their actions and behavioral patterns. They would have to rely on hearsay evidence to prove their claims as to what actually happened.

During cross-examination, accused-appellant testified on matters that were only related to him by others:

Q What in particular were you experiencing at the time, reason why you consulted a quack doctor?
A I was always out of my mind, ma'am.

Q How did you know that you were out of your mind?
A I do not (sic) know at that time but people told me I was out of my mind, ma'am.

Q And these people told you that you were out of your mind during those times that you were experiencing depression, is that correct?
A These people told me that, every time my mind was stable, ma'am.

Q So, what in particular did those persons tell you every time your mind was stable?
A They told me that I am doing a lot of things that I am not aware of (sic), ma'am.

Q Can you cite some examples that was (sic) told you by the people around you?
A They told me that I attempted to commit suicide by hanging myself by a piece of rope which I was not aware of, ma'am.[156]

Soledad may be considered as a competent witness as she has personal knowledge of her son's behavior and conduct. In her testimony, she described the recurring manic episodes of her son in the past:

Q Being the mother, will you please describe to us how is Lito Paña as your (sic) son?
A He is of good character, ma'am.

Q How about the health condition of Lito Paña, can you describe to us his health condition prior to March 20, 2005?
A He was not able to sleep, ma'am.

Q Other than his failure to sleep, were there any other matter, if any, regarding the health of Lito Paña?
A He is (sic) always quiet, ma'am.

Q What else, if any, can you say about the health condition of Lito Paña?
A As if he was always uneasy (balisa), ma'am.

Q When did you start noticing this health problem of Lito Paña?
A Quite a long time, ma'am.

Q Do you remember in what year?
A That was year 2003, ma'am.

Q What did you do if any to address that health condition or problem of your son Lito Paña?
A We brought him to a quack doctor, ma'am.

Q Why did you brought (sic) him to a quack doctor?
A Because as if he was out of his mind, ma'am.[157]

---

[156] CA *rollo*, pp. 42-43.

[157] Id. at 40-41.

However, that accused-appellant was uneasy, quiet, and suffered from sleepless nights does not make him legally insane. If at all, these may only have been manifestations of unusual behavior or his alleged depression.

Aside from this, Soledad's testimony regarding her son's behavior does not relate to the time immediately before or simultaneous with the commission of the offense:

Q You mentioned that Lito Paña have (sic) health problems, how long have these problems occurred?
A It started 2003 to 2004 and 2005, ma'am.

Q Can you please describe to us the actuation of (sic) behavior of your son Lito Paña during his health problems?
A He was (sic) able to sleep for four (4) days and he keeps on walking for (sic) to and fro inside the house, ma'am.

Q For how long does this period of unusual behavior takes place?
A It takes a month, ma'am.

Q Other than this unusual behavior, is there any basis observed by you why you said that Lito Paña was not in his right mind during those times?
A I always saw him sitting quietly and whenever I talked to him, he answered me differently, ma'am.

Q You mentioned that this unusual behavior, that he was not on his right mind on (sic) 2003 to 2005. At the start of 2005 can you please describe to us the behavior of your son, Lito Paña?
A As if he is always not in right mind (sic), ma'am.[158]

To the contrary, accused-appellant's reaction and behavior immediately after he had killed the accused showed that he understood the wrongfulness of his action. As narrated by the police, the accused ran away to evade arrest. This, to our mind, shows that he understood the depravity and consequences of his action.

---

[158] Id. at 41.

Further, the defense should have presented other witnesses who could have given a more objective assessment of the accused's mental condition such as the quack doctor who he allegedly consulted or other people from his community who had personal knowledge of his behavior.

It is highly crucial for the defense to present an expert who can testify on the mental state of the accused. While testimonies from medical experts are not absolutely indispensable in insanity defense cases, their observation of the accused are more accurate and authoritative. Expert testimonies enable courts to verify if the behavior of the accused indeed resulted from a mental disease.

While ordering a mental examination would have been valuable in this case, there were no indications that the accused-appellant was mentally ill and incompetent to stand trial. During arraignment, he was assisted by his counsel to plead not guilty to the charge. There were no motions from his counsel for the suspension of the trial or for his confinement. There was no mention of accused's erratic demeanor during trial. Further, there were no manifestations from the warden or other persons that the accused was exhibiting abnormal behavior while he was incarcerated.

The sole testimony of accused-appellant's mother was insufficient to show that his actions were caused by a mental illness. In sum, the defense failed to show clear and convincing evidence that as a result of a mental illness, accused-appellant was unable to appreciate the nature and quality of the wrongfulness of his acts at the time of the commission of the crime.

Due to the failure of the accused-appellant to prove that he was legally insane at the time of the commission of the offense, his conviction stands. However, in accordance with *People v. Jugueta*,[159] this Court modifies the amount of civil indemnity from ₱50,000.00 to ₱100,000.00. Moral damages and exemplary damages of ₱100,000.00 each should also be awarded.

---

[159] 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

WHEREFORE, the appeal is **DISMISSED**. The assailed March 13, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05483 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Lito Paña y Inandan is found **GUILTY** beyond reasonable doubt of murder and is sentenced to suffer the penalty of *reclusion perpetua*.

Moreover, he is ordered to pay the heirs of Sherwin Macatangay the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as exemplary damages, and ₱100,000.00 as moral damages. In line with current jurisprudence, an interest at the rate of 6% per annum is imposed on all damages awarded from the date of the finality of this Decision until fully paid.[160]

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Hernando, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Carandang and *Lazaro-Javier, JJ.*, on official leave.

---

[160] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013) [Per J. Peralta, En Banc].

THIRD DIVISION

[A.C. No. 9417. November 18, 2020]

JOHN PAUL KIENER, *Complainant, v.* **ATTY. RICARDO R. AMORES,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; NOTARIZATION; A NOTARY PUBLIC MUST STRICTLY COMPLY WITH THE NOTARIAL RULES.— It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined." Atty. Amores is, therefore, bound to strictly comply with these notarial rules.

2. ID.; ID.; RULES ON NOTARIAL PRACTICE; *JURAT*; THE SIGNATORY OR AFFIANT MUST PHYSICALLY APPEAR BEFORE THE NOTARY PUBLIC AND SIGN THE DOCUMENT IN THE LATTER'S PRESENCE.— A notary public is empowered to perform a variety of notarial acts, one of which is a *jurat*. Atty. Amores performed a *jurat* when he notarized the Secretary's Certificate with Irene signing as the Corporate Secretary. Rule II, Section 6 of the Rules on Notarial Practice defines a jurat . . .

This provision requires that the signatory, or the affiant in some cases, physically appears before the notary public and signs the document in his presence.

Rule IV, SEction 2 of the same rules . . . bolsters the requirement of physical appearance as it prohibits the notary public from performing a notarial act if the signatory is not in his/her presence at the time of the notarization.

In *Prospero v. Delos Santos*, the Court emphasized that ". . . Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed."

3. ID.; ID.; ID.; A VIOLATION OF THE NOTARIAL RULES IS ALSO A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Atty. Amores violated the Rules on Notarial Practice. For having committed such violations, he also failed to adhere to Canon 1 of the CPR, which requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, and Rule 1.01, Canon 1 of the CPR, which prohibits a lawyer from engaging in any unlawful, dishonest, immoral, and deceitful conduct.

4. ID.; ID.; ID.; PENALTY FOR VIOLATION OF THE NOTARIAL RULES.— As to the penalty, recent jurisprudence provides that a notary public who fails to discharge his duties or fails to comply with the Rules on Notarial Practice may be penalized with revocation of his current notarial commission and disqualification from reappointment as Notary Public. Thus, the Court holds that Atty. Amores's current notarial commission, if there is any, should be revoked. Further, he should be disqualified from reappointment as Notary Public for a period of two years.

5. ID.; ID.; ID.; A COMMUNITY TAX CERTIFICATE IS NO LONGER A COMPETENT EVIDENCE OF IDENTITY.— On a final note, the Court deems it necessary to remind lawyers who are currently commissioned as notaries public that a community tax certificate (CTC) is no longer considered as competent evidence of identity. Atty. Amores used a CTC as competent evidence of identity of Irene in notarizing the Secretary's Certificate. However, it was not a violation at the time of the performance of the notarial act in 2007 as the use of CTCs was prohibited only in 2008 by virtue of an amendment to the Rules on Notarial Practice as clarified in the case of *Baylon v. Almo*.

APPEARANCES OF COUNSEL

William M. Mañus for respondent.

D E C I S I O N

HERNANDO, *J.*:

This administrative case arose from two identical Complaints[1] filed by complainant John Paul Kiener (**John Paul**) before the Office of the Bar Confidant[2] (**OBC**) and the Office of the Court Administrator[3] (**OCA**) praying for the imposition of disciplinary sanctions[4] against respondent Atty. Ricardo R. Amores (**Atty. Amores**). The OCA referred the Complaint filed before it to the OBC.[5]

The Factual Antecedents:

In his Complaint, John Paul alleges that Atty. Amores committed an act that is in violation of the 2004 Rules on Notarial Practice[6] (**Rules on Notarial Practice**) and Canons 1, 10, and 19 of the Code of Professional Responsibility (**CPR**).[7]

John Paul was the accused in a criminal case for Estafa entitled *People of the Philippines v. John Paul Kiener*,[8] pending before the Municipal Trial Court in Lapu-Lapu City, Cebu.[9] Atty. Amores was the private prosecutor on behalf of private

---

[1] *Rollo*, pp. 2-11; 35-44; dated March 26, 2012.

[2] Id. at 2-11; filed before the OBC on April 10, 2012.

[3] Id. at 35-44; filed before the OCA on April 4, 2012.

[4] The Complaint states "That the complainant respectfully prays that the respondent be disbarred, suspended from the practice of law, or imposed the appropriate disciplinary action." *Rollo*, p. 9.

[5] *Rollo*, p. 33. 1st Indorsement to OBC dated April 10, 2012.

[6] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, July 6, 2004.

[7] *Rollo*, pp. 2-3.

[8] Docketed as Criminal Case No. R-21884. See *rollo*, p. 12.

[9] *Rollo*, p. 12.

complainant Pado's Divecamp Resort Corporation (**Corporation**).[10] He was also a commissioned notary public at that time.[11] Irene Medalla (**Irene**), the Corporate Secretary of the Corporation, executed a Secretary's Certificate on July 18, 2007.[12] The Secretary's Certificate authorized Cho Chang Je, the Chairman of the Board of Directors of the Corporation, to file a criminal case (referring to the above mentioned criminal case) on behalf of the Corporation against John Paul. Atty. Amores was the one who notarized the Secretary's Certificate.[13] The Secretary's Certificate was attached to the Complaint-Affidavit filed in the criminal case.[14]

John Paul claims that the Secretary's Certificate was defective and improperly notarized.[15] He alleges that Atty. Amores as notary public failed to indicate the serial number of his notarial commission in the notarial certificate, and that Irene's signature appears to have been printed or scanned (digital copy) into the document.[16] He asserts that because of the use of a printed signature, Irene could not have been physically present before Atty. Amores when the document was signed and notarized.[17] John Paul claims that this act constitutes a violation of the requirement of physical presence of the signatory in the performance of a notarial act as provided in Rule IV, Section 2 of the Rules on Notarial Practice.[18] Further, he claims that this act likewise constitutes a violation of Rule 1.01,[19] Canon

---

[10] Id. at 4.

[11] Id. at 3.

[12] *See* Annex "B," *rollo*, p. 14.

[13] Id. at 4.

[14] Id.

[15] Id.

[16] Id. at 4-5.

[17] Id. at 6.

[18] Id. at 7.

[19] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

1, Rule 10.01,[20] Canon 10, and Rule 19.01,[21] Canon 19, of the CPR.[22]

On August 16, 2012, Atty. Amores filed a *Motion for Extension of Time to File Comment with Motion for Consolidation of Instant Case with Administrative Case No. 9055*.[23]

In his Comment,[24] Atty. Amores claims that Irene signed the Secretary's Certificate in his presence.[25] He counters that the use of a printed or scanned signature does not in itself constitute a violation of the Rules on Notarial Practice.[26] He farther claims that it is common practice for the signatory to sign only one copy and to reproduce the originally signed copy to the desired number of copies before notarization.[27] Moreover, John Paul's allegations are matters that could be raised by way of defense in the criminal case instead of being used for the filing of an administrative case against him.[28] He also claims that the instant case is a personal attack and a form of harassment given that there is another pending administrative case against him.[29]

---

[20] A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[21] A lawyer shall employ only-fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

[22] *Rollo*, p. 8.

[23] Id. at 69-71.

[24] Id. at 77-80; dated September 18, 2012. Filed before the OBC on September 19, 2012.

[25] Id. at 77.

[26] Id.

[27] Id.

[28] Id. at 77-78.

[29] Id. at 78.

On June 19, 2013, this Court, upon the recommendation of the OBC, ordered the consolidation of the instant administrative case with Administrative Case No. 9055 (**A.C. No. 9055**), which was already referred to the Integrated Bar of the Philippines (**IBP**).[30] The instant case was likewise referred to the IBP for investigation, report and recommendation.[31]

A.C. No. 9055, entitled *John Paul Kiener and Julie S. Kiener v. Atty. Ricardo D. Amores*, involves a Complaint charging Atty. Amores with violation of the CPR when he committed acts of Gross Negligence or Misconduct in belatedly entering his appearance, failing to attend hearings, submitting pleadings beyond the reglementary period, and falsely representing to the lower court that there was an on-going amicable settlement among the parties in a case.[32] The IBP recommended that Atty. Amores be suspended from the practice of law for six months with warning that repetition of the same act shall be dealt with more severely.[33]

The Court notes that A.C. No. 9055 has already been resolved even though consolidated with the instant case. In a Resolution[34] dated June 8, 2016 of the First Division of this Court, Atty. Amores was found guilty of Gross Misconduct, Inexcusable Negligence, Gross Incompetence, and Gross Neglect of Duty as a lawyer. He was suspended from the practice of law for six months, with warning that repetition of the same act shall be dealt with more severely.[35] He was subsequently held in contempt, where he paid a fine of ₱5,000.00, for his failure to immediately

---

[30] Id. at 199-200.

[31] Id. at 199.

[32] Id. at 1-11.

[33] Id., unpaginated; *see* IBP Board of Governors' Resolution dated April 16, 2013; *rollo*, unpaginated.

[34] This First Division's Resolution is stated in OCA Circular No. 246-2016, November 21, 2016, with subject "Suspension of Atty. Ricardo R. Amores from the Practice of Law for Six (6) Months."

[35] Id.

obey the order of his suspension from practice of law as mandated in the said Resolution.[36] Eventually, in a subsequent Resolution dated July 11, 2018, the Court lifted the order of his suspension and allowed Atty. Amores to resume his practice of law effective immediately.[37]

Report and Recommendation of the IBP:

Reverting to the instant case, Investigating Commissioner Erwin L. Aguilera recommended the revocation of Atty. Amores's appointment as Notary Public and his disqualification from reappointment as such for a period of two years.[38] He found that Atty. Amores failed to ascertain the genuineness of Irene's signature when he notarized the document and that there was no evidence to show that Irene was physically present.[39]

However, in Resolution[40] No. XX1-2015-332 dated April 19, 2019, the IBP Board of Governors (BOG) reversed and set aside the Investigating Commissioner's Report and Recommendation, and resolved to dismiss the administrative case. The Resolution states:

> RESOLVED to REVERSE, as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and considering that the Secretary's Certificate was personally signed by Irene Medalla and she was present during its notarization, the case against Respondent is hereby DISMISSED.[41]

---

[36] *See* OCA Circular No. 198-2018 dated September 12, 2018, with subject "Lifting of Suspension from the Practice of Law of Atty. Ricardo R. Amores."

[37] This First Division's Resolution is stated in OCA Circular No. 198-2018 dated September 12, 2018, with subject "Lifting of Suspension from the Practice of Law of Atty. Ricardo R. Amores."

[38] *Rollo*, unpaginated.

[39] Id.

[40] Id.

[41] Id.

In its Extended Resolution,[42] the IBP BOG ruled that Irene indeed appeared before Atty. Amores.[43] As notary public, Atty. Amores carries with him the presumption that he has performed his duties as required.[44] This presumption of regularity was not overcome by John Paul.[45] Nothing on record shows that Irene was not or could not be physically present at that time.[46] Moreover, John Paul had no personal knowledge of the events to support his allegations.[47]

John Paul filed a Motion for Reconsideration[48] but this was subsequently denied by the IBP BOG in a Resolution dated June 17, 2019.[49]

Our Ruling

The Court disagrees with the IBP. Atty. Amores should be held administratively liable for violating the Rules on Notarial Practice when he notarized a document without the presence of the signatory and failed to indicate his commission number in the notarial certificate.

It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise,

---

[42] Id. dated January 23, 2019.

[43] Id.

[44] Id.

[45] Id.

[46] Id.

[47] Id.

[48] Id., filed on April 26, 2019.

[49] Id.

the public's confidence in the integrity of a notarized document would be undermined."[50] Atty. Amores is, therefore, bound to strictly comply with these notarial rules.

A notary public is empowered to perform a variety of notarial acts, one of which is a *jurat*. Atty. Amores performed a *jurat* when he notarized the Secretary's Certificate with Irene signing as the Corporate Secretary. Rule II, Section 6 of the Rules on Notarial Practice defines a jurat as:

> Section 6. *Jurat*. — "*Jurat*" refers to an act in which an individual on a single occasion:
> (a) appears in person before the notary public and presents an instrument or document
> (b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;
> (c) signs the instrument or document in the presence of the notary; and
> (d) takes an oath or affirmation before the notary public as to such instrument or document.

This provision requires that the signatory, or the affiant in some cases, physically appears before the notary public and signs the document in his presence.

Rule IV, Section 2 of the same rules further provides:

> x x x x
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document
> (1) is not in the notary's presence personally at the time of the notarization; and
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

This provision bolsters the requirement of physical appearance as it prohibits the notary public from performing a notarial act if the signatory is not in his/her presence at the time of the notarization.

---

[50] *Tabao v. Lacaba*, A.C. No. 9269, March 13, 2019 citing *Triol v. Agcaoili, Jr.*, A.C. No. 12011, June 26, 2018.

In *Prospero v. Delos Santos*,[51] the Court emphasized that "a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed."

To repeat, Atty. Amores failed to observe the requirement of physical presence when he notarized the Secretary's Certificate. Upon examination of the document, and as admitted by Atty. Amores himself, Irene's signature in the Secretary's Certificate attached to the complaint-affidavit in the criminal case was merely printed. In short, it was not an actual handwritten signature of Irene. Atty. Amores's defense that Irene physically signed one copy that was subsequently reproduced then notarized, does not convince this Court. Atty. Amores did not present any proof that Irene was indeed physically in his presence upon the signing and notarization of the document. It goes without saying that Irene had signed the document elsewhere, scanned it, and then sent it electronically to Atty. Amores for the latter to print, reproduce, notarize, and use for the designated purpose. If indeed Irene had personally appeared before him, he should have asked her right then and there to affix her signature to each and every copy of the document, not just to one copy.

It is also worth mentioning that Atty. Amores failed to indicate the serial number of his notarial commission in the concluding part of the notarial certificate of the Secretary's Certificate as required by the rules.[52]

---

[51] A.C. No. 11583, December 3, 2019.

[52] Rule VIII, Section 2 of the Rules on Notarial Practice provides:

SECTION 2. Contents of the Concluding Part of the Notarial Certificate. — The notarial certificate shall include the following:

(a) the name of the notary public as exactly indicated in the commission;

(b) the serial number of the commission of the notary public;

Based on the foregoing, Atty. Amores violated the Rules on Notarial Practice. For having committed such violations, he also failed to adhere to Canon 1 of the CPR, which requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, and Rule 1.01, Canon 1 of the CPR, which prohibits a lawyer from engaging in any unlawful, dishonest, immoral, and deceitful conduct.[53]

As to the penalty, recent jurisprudence provides that a notary public who fails to discharge his duties or fails to comply with the Rules on Notarial Practice may be penalized with revocation of his current notarial commission and disqualification from reappointment as Notary Public.[54] Thus, the Court holds that Atty. Amores's current notarial commission, if there is any, should be revoked. Further, he should be disqualified from reappointment as Notary Public for a period of two years.

On a final note, the Court deems it necessary to remind lawyers who are currently commissioned as notaries public that a community tax certificate (**CTC**) is no longer considered as competent evidence of identity.[55] Atty. Amores used a CTC as competent evidence of identity of Irene in notarizing the Secretary's Certificate. However, it was not a violation at the time of the performance of the notarial act in 2007 as the use of CTCs was prohibited only in 2008 by virtue of an amendment

---

(c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and

(d) the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.

[53] *See Ko v. Uy-Lampasa*, A.C. No. 11584, March 6, 2019.

[54] *See Ang v. Belaro, Jr.*, A.C. No. 12408, December 11, 2019 citing *Iringan v. Gumangan*, 816 Phil. 820 (2017). *See also Ko v. Uy-Lampasa*, supra citing *Baysac v. Aceron-Papa*, 792 Phil. 635 (2016).

[55] *Baylon v. Almo*, 578 Phil. 238 (2008).

to the Rules on Notarial Practice as clarified in the case of *Baylon v. Almo*.[56]

WHEREFORE, the Court finds respondent Atty. Ricardo R. Amores **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, his notarial commission, if still existing, is **REVOKED**, and he is hereby **DISQUALIFIED** from being reappointed as Notary Public for a period of two (2) years.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to Atty. Ricardo R. Amores's personal record, and the Office of the Court Administrator and the Integrated Bar of the Philippines for their information and guidance.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos*, and *Rosario, JJ.*, concur.

---

[56] The Secretary's Certificate was executed and notarized on July 18, 2007. The Rules on Notarial Practice was amended on February 19, 2008; the case of *Baylon v. Almo*, supra, that clarified that CTCs are no longer competent evidence of identity in connection with performance of notarial acts, was promulgated on June 25, 2008.

THIRD DIVISION

[A.C. No. 12822. November 18, 2020]

EDGARDO A. TAPANG, *Complainant, v.* **ATTY. MARIAN C. DONAYRE,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING, ESSENCE OF; THREE WAYS TO COMMIT FORUM-SHOPPING.— "The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment." In *Chua v. Metropolitan Bank & Trust Company*, the Court enumerated the different ways by which forum shopping may be committed:

> Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

2. LEGAL ETHICS; ATTORNEYS; FILING ANOTHER CASE WITH THE SAME CAUSE OF ACTION AND PRAYER AND INVOLVING THE SAME PARTIES DESPITE THE FINALITY OF THE DECISION IN THE EARLIER CASE CONSTITUTES A VIOLATION OF THE RULE AGAINST FORUM SHOPPING, THE DOCTRINE OF *RES JUDICATA,* AND THE CODE OF PROFESSIONAL RESPONSIBILITY.— Notwithstanding the finality of the dismissal of the earlier case, Atty. Donayre *deliberately* filed another labor case, docketed as NLRC RAB-VII Case No. 07-

1396-10, based on the *same cause of action*, involving the *same parties*, and with the *same prayer* before the LA.

Atty. Donayre should have known better than to file the second labor case as the dismissal of NLRC Case No. RAB VII-09-2458-2009 had the effect of an *adjudication on the merits*. . . .

By her conduct, there is no question that Atty. Donayre had violated the rule against forum shopping and the doctrine of *res judicata* in breach of Rule 10.03, Canon 10, and Rules 12.02 and 12.04, Canon 12 of the Code of Professional Responsibility (CPR).

3. ID.; ID.; LAWYERS MUST COMPLY PROMPTLY AND COMPLETELY WITH THE LAWFUL ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP).— [T]he records further show that Atty. Donayre had *unjustifiably* failed to comply with the IBP's directives to file her verified answer, to attend the mandatory conference, and to submit her position paper despite having received due notice thereof. As an officer of the Court, Atty. Donayre is expected to know that the directives of the IBP, as the investigating arm of the Court in administrative cases against lawyers, are *not* mere requests but are lawful orders which should be complied with promptly and completely.

Atty. Donayre's blatant noncompliance with these directives clearly indicates a lack of respect for the Court and the IBP's rules and procedures, which, in itself, is tantamount to willful disobedience of the lawful orders of the Supreme Court, in violation of Canon 1 of the CPR. . . .

It also constitutes a breach of the Lawyer's Oath which imposes upon all members of the Bar the duty "[t]o support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein xxx."

4. ID.; ID.; THE DETERMINATION OF THE APPROPRIATE PENALTY TO BE IMPOSED ON AN ERRANT LAWYER INVOLVES THE EXERCISE OF SOUND JUDICIAL DISCRETION BASED ON THE FACTS OF THE CASE.— It is well settled that "[t]he determination of the appropriate penalty to be imposed on an errant lawyer involves the exercise of sound judicial discretion based on the facts of the case." Given

the factual milieu of this case, the Court deems it proper to suspend Atty. Donayre from the practice of law for a period of two (2) years for violation of the rule against forum shopping and the doctrine of *res judicata*, as well as for her willful disobedience of the lawful orders of the Supreme Court.

APPEARANCES OF COUNSEL

Casul Law Office for complainant.

D E C I S I O N

INTING, *J.*:

This administrative case is rooted in a verified Petition[1] filed by Edgardo A. Tapang (complainant) against Atty. Marian C. Donayre (Atty. Donayre) before the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (IBP-CBD) for her alleged violation of the rule against forum shopping.

The Antecedents

Complainant alleged that he was the respondent in a labor case for illegal dismissal and monetary claims filed by Ananias Bacalso (Bacalso) before the Labor Arbiter (LA). The case was docketed as NLRC Case No. RAB VII-09-2458-2009.[2]

In the Decision[3] dated May 14, 2010 in NLRC Case No. RAB VII-09-2458-2009, the LA dismissed the case for lack of merit, *viz.*:

x x x There is no evidence in the record showing that complainant was hired by the respondent. That he was paid remuneration in the form of salaries or wages. That, respondent exercised power of

---

[1] *Rollo*, pp. 2-3.

[2] As culled from the complaint filed with the National Labor Relations Commission (NLRC) Decision, *id.* at 16-17.

[3] *Id.* at 28-31-A; penned by Acting Executive Labor Arbiter (LA) Jose G. Gutierrez.

dismissal upon the complainant and that the respondent has exercised or at least has the power of control over the complainant. Obviously, there is nothing found in the record that could sustain any conclusion that there is employer-employee relationship existing between the complainant and the respondent. This being the case, complainant's complaint should be dismissed.[4]

There being no appeal filed by Bacalso with the National Labor Relations Commission (NLRC), the LA Decision became final and executory on June 10, 2010. Atty. Donayre, as the counsel on record for Bacalso, received a copy of the Decision on May 31, 2010.[5]

On July 5, 2010, Atty. Donayre filed another illegal dismissal complaint in Bacalso's behalf with the *same claims* as the earlier case against complainant before the LA docketed as NLRC RAB-VII Case No. 07-1396-10.[6] This prompted complainant to file a Motion to Dismiss[7] on the ground of *res judicata*, citing the previous dismissal of NLRC Case No. RAB VII-09-2458-2009. However, instead of acting on the motion, the LA directed the parties to submit their respective position papers.[8]

In the Decision[9] dated March 23, 2011, the LA rendered judgment in favor of Bacalso and ordered complainant to pay the former: (a) ₱77,688.00 as separation pay; (b) ₱19,422.00 as 13th month pay; and (c) ₱9,711.00 as attorney's fees.[10]

On appeal, the NLRC overturned the LA's ruling and dismissed NLRC RAB-VII Case No. 07-1396-10 on the grounds

---

[4] *Id*. at 31-A.

[5] *Id*. at 82.

[6] *Id*. at 34.

[7] *Id*. at 35.

[8] As culled from the Decision dated November 24, 2011 of the NLRC, *id*. at 50-51.

[9] *Id*. at 10-15; penned by LA Arturo M. Camiller.

[10] *Id*. at 14.

of *res judicata* and the lack of an employer-employee relationship between complainant and Bacalso.[11]

Hence, complainant filed the instant administrative case against Atty. Donayre for her alleged violation of the rule against forum shopping.

In the Order[12] dated May 22, 2013, the IBP-CBD directed Atty. Donayre to submit her verified answer to the petition filed by complainant. However, despite due notice, Atty. Donayre failed to file her verified answer with the IBP-CBD.[13]

Moreover, Atty. Donayre also failed to appear during the mandatory conference scheduled by the IBP-CBD on November 7, 2013.[14] The IBP-CBD then required the parties to submit their respective position papers, but only complainant complied with the IBP-CBD's directive.[15]

In the Order[16] dated November 19, 2014, the IBP-CBD again directed Atty. Donayre to submit her position paper within 15 days from receipt thereof. Despite receipt of the Order on December 8, 2014, Atty. Donayre still failed to file any responsive pleading, or position paper with the IBP-CBD.[17]

The IBP Report and Recommendation

In the Report and Recommendation[18] dated September 9, 2016, the Investigating Commissioner found Atty. Donayre guilty of

---

[11] See Decision dated November 24, 2011, *id*. at 48-55; penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug, concurring.

[12] *Id*. at 59.

[13] *Id*. at 144.

[14] *Id*. at 63.

[15] See complainant's Position Paper dated April 2, 2014, *id*. at 80-87.

[16] *Id*. at 139.

[17] *Id*. at 145.

[18] *Id*. at 144-147; signed by Investigating Commissioner Racquel Crisologo-Lara.

forum shopping and recommended that she be fined in the amount of ₱2,000.00 and admonished to comply with the lawful orders of the IBP-CBD.

In the Notice of Resolution[19] dated September 28, 2017, the IBP Board of Governors resolved to adopt the findings of fact of the Investigating Commissioner, but recommended that Atty. Donayre be suspended from the practice of law for a period of six (6) months.

The Issue

The issue for the Court's resolution is whether Atty. Donayre should be held administratively liable for violating the rule against forum shopping.

The Ruling of the Court

The Court adopts the findings of fact of the IBP Board of Governors, but *modifies* its recommendation as to the proper penalty in accordance with recent jurisprudence.

"The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment."[20] In *Chua v. Metropolitan Bank & Trust Company*,[21] the Court enumerated the different ways by which forum shopping may be committed:

> Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but

---

[19] *Id*. at 142-143.

[20] *Atty. Alonso, et al. v. Atty. Relamida, Jr.*, 640 Phil. 325, 334 (2010).

[21] 613 Phil. 143 (2009).

with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[22]

While there is no showing that Atty. Donayre was the one who prepared and filed Bacalso's first complaint for illegal dismissal and money claims docketed as NLRC Case No. RAB VII-09-2458-2009, the records reveal that she was the counsel on record for Bacalso when the LA dismissed the case in a Decision dated May 14, 2010. This is precisely the reason why Atty. Donayre was furnished with a copy of the LA's Decision which, notably, became final and executory on June 10, 2010.

Notwithstanding the finality of the dismissal of the earlier case, Atty. Donayre *deliberately* filed another labor case, docketed as NLRC RAB-VII Case No. 07-1396-10, based on the *same cause of action*, involving the *same parties*, and with the *same prayer* before the LA.

Atty. Donayre should have known better than to file the second labor case as the dismissal of NLRC Case No. RAB VII-09-2458-2009 had the effect of an *adjudication on the merits*. More than that, it appears that Atty. Donayre filed the second illegal dismissal case almost one month after the Decision dated May 14, 2010 attained finality. Such action clearly reveals a misplaced zealousness and malicious intent to *relitigate* the case in the hope of gaining a favorable judgment. It also demonstrates a clear *abuse* and *misuse of court processes* to the detriment not only of the winning party, but also of the administration of justice.[23]

By her conduct, there is no question that Atty. Donayre had violated the rule against forum shopping and the doctrine of *res judicata*[24] in breach of Rule 10.03, Canon 10, and Rules

---

[22] *Id*. at 153-154, citing *Collantes v. Court of Appeals*, 546 Phil. 391, 400 (2007) and *Rev. Ao-As v. Court of Appeals*, 524 Phil. 645, 660 (2006).

[23] See *In Re: G.R. No. 157659 "Mallari v. GSIS, et al.,"* 823 Phil. 164 (2018).

[24] The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a

12.02 and 12.04, Canon 12 of the Code of Professional Responsibility (CPR) which provide:

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

x x x x

Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

CANON 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

x x x x

Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.

x x x x

Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

Worse, the records further show that Atty. Donayre had *unjustifiably* failed to comply with the IBP's directives to file her verified answer,[25] to attend the mandatory conference,[26] and to submit her position paper[27] despite having received due notice thereof.[28] As an officer of the Court, Atty. Donayre is expected to know that the directives of the IBP, as the investigating arm of the Court in administrative cases against

---

court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action identity of parties, subject matter, and causes of action. See *Spouses Torres v. Medina*, 629 Phil. 101, 110 (2010).

[25] See Order dated May 22, 2013 of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), *rollo*, p. 59.

[26] See Notice of Mandatory Conference/Hearing dated October 11, 2013, *id*. at 60.

[27] See Order dated November 19, 2014 of the IBP-CBD, *id*. at 139.

[28] *Id*. at 144-145.

lawyers, are *not* mere requests but are lawful orders which should be complied with promptly and completely.[29]

Atty. Donayre's blatant noncompliance with these directives clearly indicates a lack of respect for the Court and the IBP's rules and procedures, which, in itself, is tantamount to willful disobedience of the lawful orders of the Supreme Court,[30] in violation of Canon 1 of the CPR which states:

> CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land, and promote respect for law and legal processes.

It also constitutes a breach of the Lawyer's Oath which imposes upon all members of the Bar the duty "[t]o support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein x x x."

In the recent case of *Villanueva v. Atty. Alentajan*,[31] the Court found the respondent lawyer guilty of engaging in forum shopping and suspended him from the practice of law for three months.

In *Radial Golden Marine Services Corporation v. Atty. Cabugay*,[32] the Court ruled that the respondent lawyer's nonchalant attitude in complying with the IBP's directives, as well as the Court's Resolutions, constituted willful disobedience of the lawful orders of the Supreme Court. Thus, the Court suspended the respondent lawyer from the practice of law for two (2) years, even though the allegations against him were wholly unsubstantiated which would have warranted the dismissal of the case.

It is well settled that "[t]he determination of the appropriate penalty to be imposed on an errant lawyer involves the exercise

---

[29] See *Radial Golden Marine Services Corporation v. Atty. Cabugoy*, A.C. No. 8869 (Resolution), June 25, 2019.

[30] *Id*.

[31] A.C. No. 12161, June 8, 2020.

[32] *Radial Golden Marine Services Corporation v. Atty. Cabugoy*, *supra* note 29.

of sound judicial discretion based on the facts of the case."[33] Given the factual milieu of this case, the Court deems it proper to suspend Atty. Donayre from the practice of law for a period of two (2) years for violation of the rule against forum shopping and the doctrine of *res judicata*, as well as for her willful disobedience of the lawful orders of the Supreme Court.

WHEREFORE, the Court finds respondent Atty. Marian C. Donayre **GUILTY** of violating Canon 1, Rule 10.3, Canon 10, and Rules 12.02 and 12.04, Canon 12 of the Code of Professional Responsibility and the Lawyer's Oath.

Accordingly, respondent Atty. Marian C. Donayre is **SUSPENDED** from the practice of law for a period of two (2) years with a **STERN WARNING** that a repetition of similar acts will be dealt with more severely.

The suspension from the practice of law shall take effect immediately upon receipt of this Decision by respondent Atty. Marian C. Donayre. She is **DIRECTED** to immediately file a Manifestation to the Court that her suspension has started, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent Atty. Marian C. Donayre's personal record, the Office of the Court Administrator, and the Integrated Bar of the Philippines for their information and guidance.

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Delos Santos,* and *Rosario, JJ.*, concur.

---

[33] *Venterez v. Atty. Cosme*, 561 Phil. 479, 490 (2007), citing *Endaya v. Atty. Oca*, 457 Phil. 314, 329 (2003).

FIRST DIVISION

[G.R. Nos. 190728-29. November 18, 2020]

PEOPLE OF THE PHILIPPINES, *Petitioner, v.* **HON. SANDIGANBAYAN (THIRD DIVISION), ENRIQUE T. GARCIA, JR., BENJAMIN M. ALONZO, EDGARDO P. CALIMBAS, FERNANDO C. AUSTRIA, EDUARD G. FLORENDO, EDWARD C. ROMAN, RODOLFO S. SALANDANAN, ORLANDO S. MIRANDA, RODOLFO S. IZON, DANTE R. MANALAYSAY, and MANUEL N. BELTRAN,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PROPER REMEDY TO ASSAIL A FINAL ORDER OF THE SANDIGANBAYAN IS A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT.— [T]he Court agrees with private respondents' submission that petitioner availed of the wrong remedy with the filing of the instant petition for *certiorari* under Rule 65 of the Rules of Court. Considering that the Resolution of the Sandiganbayan which dismissed the Informations against private respondents was a final order that finally disposed of the case, the proper remedy therefrom is a petition for review under Rule 45 of the Rules of Court, . . .

. . .

Petitioner's remedy . . . should have been to file a petition for review on *certiorari* under Rule 45 before this Court, and, reckoning the 15-day period to file the same from receipt of the Resolution, petitioner had until December 1, 2009 to file said petition for *certiorari* before this Court. Instead, petitioner filed the instant petition for *certiorari* under Rule 65 on January 19, 2010 or 48 days after the lapse of the reglementary period within which to file an appeal *via* petition for review on *certiorari*.

. . .

. . . [A]lthough the Court has, in some instances, treated petitions for *certiorari* under Rule 65 as having been filed under Rule 45 in the interest of justice, the same may not be afforded petitioner in this case since the instant petition was filed after the lapse of the period for the filing of a petition for review.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* A SPECIAL CIVIL ACTION FOR *CERTIORARI* CANNOT BE USED AS A SUBSTITUTE FOR A LOST APPEAL.— Petitioner resorted to the instant special civil action after failing to appeal within the 15-day reglementary period, and the same may not be allowed for, as the Court has held before, the special civil action of *certiorari* cannot be used as a substitute for an appeal which petitioner already lost.

A special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy, and adequate remedy in the ordinary course of law and the same may not be entertained when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, WHEN PRESENT; CASE AT BAR.— There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

After a thoughtful and circumspect evaluation of the entire records of the case at bar, the Court finds that the Sandiganbayan did not commit grave abuse of discretion in dismissing the Informations against private respondents. In finding no grave abuse, the Court finds: (1) that at the time private respondents entered into the Compromise Agreement, the Province of Bataan did not enjoy any vested right over the subject properties, and therefore, private respondents could not have injured a right or

interest that did not exist; and (2) that private respondents' decision to negotiate and enter into the Compromise Agreement with the PCGG and BASECO is their collective judgment call pursuant to the corporate powers of the local government unit, and may not be interfered with absent competent proof showing any ill motive on the part of private respondents.

4. POLITICAL LAW; EXECUTIVE ORDER NO. 1; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); PCGG'S POWER OF SEQUESTRATION IS MERELY PROVISIONAL IN NATURE.— In *Philippine Overseas Telecommunications Corporation (POTC) v. Sandiganbayan (3rd Division)*, the Court explained the necessary as well as provisional nature of sequestration, *viz.*:

> . . . [T]he power of the PCGG to sequester is merely provisional. None other than Executive Order No. 1, Section 3(c) expressly provides for the provisional nature of sequestration, to wit:
>
> c) To **provisionally** take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

5. ID.; ID.; ID.; EFFECT OF SEQUESTRATION PROCEEDINGS OVER THE PROPERTIES SEQUESTERED.— In the case of *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*, the Court elucidated on the effect of the sequestration proceedings over the properties sequestered: . . .

> *a. Sequestration*
>
> By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities," — for the purpose of preventing the destruction,

concealment or dissipation of, and otherwise conserving and preserving, the same — until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," [*i.e.*], acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.

6. ID.; ID.; ID.; CRIMINAL LAW; VIOLATION OF SEC. 3 (E & G) OF R.A. NO. 3019; REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; IN THE ABSENCE OF VESTED RIGHTS OVER THE SUBJECT PROPERTIES IN VIEW OF THE PENDENCY OF THE SEQUESTRATION PROCEEDINGS AND OF ANOTHER CASE, AN INFORMATION FOR VIOLATION OF SEC. 3 (E & G) OF R.A. NO. 3019 HAS NO LEG TO STAND ON.—[T]he Province of Bataan's ownership over the subject properties, apart from it being disputed in Civil Case No. 212-ML, is likewise still subject to the resolution of the sequestration case in Civil Case No. 0010.

Given these two tiers of pendency of determination of rights which cover the subject properties, the Province of Bataan cannot be deemed to have enjoyed vested rights over the same. Contrary to petitioner's reasoning, Civil Case No. 212-ML and Civil Case No. 0010 are *not* immaterial to the validity and propriety of the Compromise Agreement, as they are tightly interwoven with the issue at hand.

More so, the Province of Bataan may not be considered to have enjoyed vested rights so certain that a reduction of the same could support a criminal prosecution, as in this case. Once more, since the Province of Bataan did not have a right *in esse* over the subject properties, its interest could not be said to have been so permanent that the concessions made by it in the Compromise Agreement were grossly disadvantageous to its interests as to merit the criminal prosecution of private respondents for violation of Section 3(e) and (g) of R.A. 3019.

The Sandiganbayan, therefore, ruled well within its jurisdiction when it determined lack of probable cause in the issuance of warrants of arrest against private respondents, and dismissed the Informations in the face of apparent absence of legal ground to stand on.

7. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; ENTERING INTO A COMPROMISE AGREEMENT IS WITHIN THE CORPORATE POWERS OF A LOCAL GOVERNMENT UNIT (LGU).— Private respondents' act of authorizing, entering into and ratifying the Compromise Agreement are well within their authorities under R.A. 7160. Contrary to the evident bad faith or gross negligence that Section 3 (e) requires, the records reveal that private respondents considered entering into the Compromise Agreement in order to settle the longstanding case once and for all, and secure for the province a majority interest over the subject properties that, otherwise, would have remained in legal limbo. The whereas clause of the *SangguniangPanlalawigan*'s Resolution No. 38, which authorized private respondent Garcia to negotiate the said Compromise Agreement, provides for private respondents' purpose.

8. ID.; ID.; ID.; LGUs ARE AUTHORIZED TO PASS RESOLUTIONS AND ORDINANCES FOR THE WELFARE OF THEIR CONSTITUENCIES; GENERAL WELFARE, DEFINED.—Section 468 (a) of R.A. 7160 authorizes the *SangguniangPanlalawigan* to pass resolutions and ordinances for the welfare of the province, . . .

Demonstrably, private respondents' objective of securing on behalf of the Province of Bataan majority interest over the subject properties falls squarely within the definition of protecting the "general welfare" of their constituents, as defined under Section 16 of R.A. 7160[.]

9. ID.; ID.; ID.; IN ORDER TO CHALLENGE AND INTERFERE WITH THE CORPORATE PREROGATIVE OF THE LGU, ILL MOTIVE MUST BE SHOWN.— In order to challenge and interfere with this corporate prerogative of the local government unit, ill motive must be shown. To be sure, such ill motive was not shown, much less alleged, in petitioner's submissions. What's more, the Court finds that the records of

the case at bar are bereft of any showing of ill motive that may have underpinned private respondents' act of negotiating and entering into the Compromise Agreement. Absent a showing of such, the *SangguniangPanlalawigan*'s exercise of its discretion in authorizing private respondent Garcia, as the local chief executive, to negotiate and enter into the Compromise Agreement may not be made a basis for criminal prosecution.

10. ID.; ID.; ID.; THE GENERAL WELFARE CLAUSE IS INTERPRETED LIBERALLY IN ORDER TO GIVE THE LGUs MORE ROOM TO NAVIGATE AND RESPOND TO THE NEEDS AND CHALLENGES THAT VARY PER CONSTITUENCY.—The importance of affording local government units with a wide latitude through a liberal interpretation of the "general welfare" clause under Section 16 of R.A. 7160, was iterated in *Ferrer, Jr. v. Bautista*:

. . .

. . . [L]ocal chief executives and local legislative bodies are necessarily given enough elbow room to navigate and respond to the different community-based needs and challenges that vary per constituency. The crucial flexibility of these offices, designed no less by R.A. 7160, is defeated when each decision that they make on behalf of their constituency pursuant to their corporate powers are constantly threatened by prospects of criminal backlash after the fact.

APPEARANCES OF COUNSEL

Aurelio C. Angeles, Jr. for private respondents.

D E C I S I O N

CAGUIOA, *J.*:

At bench is a petition for *certiorari*[1] (Petition) under Rule 65 seeking the reversal of the Sandiganbayan, Third Division

[1] *Rollo*, pp. 2-43.

(Sandiganbayan) Resolution[2] dated August 7, 2009 and Resolution[3] dated November 12, 2009. The Sandiganbayan's Resolution dated August 7, 2009, among others, dismissed the Informations filed by the Office of the Ombudsman (Ombudsman) in Criminal Cases Nos. SB-08-CRM-0410 and SB-08-CRM-0411 against Enrique T. Garcia, Jr., Benjamin M. Alonzo, Edgardo P. Calimbas, Fernando C. Austria, Eduard G. Florendo, Edward C. Roman, Rodolfo S. Salandanan, Orlando S. Miranda, Rodolfo S. Izon, Dante R. Manalaysay and Manuel N. Beltran (collectively, private respondents), while the Resolution dated November 12, 2009 denied a motion to reconsider said dismissal.

The present petition arose from an earlier dispute which reached this Court in 2002 and was disposed of with all parties therein withdrawing their respective petitions after having reached a compromise agreement. The nature and effect of said agreement lies at the heart of the present controversy. A full appreciation of the issue at bar thus necessitates a recollection of the earlier cases out of which the present petition arose.

The Facts

Antecedent Cases

This controversy stems from the 1986 sequestration by the Presidential Commission on Good Government (PCGG) of the properties of Bataan Shipyard and Engineering Company, Inc., and its subsidiaries Philippine Dockyard Corporation and BASECO Drydock & Construction Co., Inc. (collectively, BASECO).[4] Among the sequestered properties were nine parcels of land with a total area of 3,005,104 square meters (subject

---

[2] Id. at 45-60. Penned by Associate Justice Francisco H. Villaruz, Jr. and concurred in by Associate Justices Efren N. De La Cruz and Alex L. Quiroz (with Separate Concurring Opinion, id. at 60).

[3] Id. at 61-66.

[4] Id. at 9.

properties),[5] and registered with the Registry of Deeds of Bataan (RD Bataan).[6]

On February 12, 1988, the Province of Bataan sold the subject properties *via* a tax delinquency sale through a public auction for the non-payment of real property taxes on the said properties. The Province of Bataan was the only bidder and the subject properties were sold to it. After the lapse of the one-year redemption period with neither PCGG nor BASECO redeeming the subject properties, the Province of Bataan filed a petition with the Regional Trial Court of Balanga, Bataan Branch 4 (RTC Balanga) docketed as LRC No. 005-ML for the consolidation of its ownership over the subject properties.[7] With no opposition recorded, RTC Balanga, in its Order dated June 22, 1989, granted the petition for consolidation and ordered the cancellation of the pertinent Transfer Certificates of Title (TCTs) issued under BASECO's name, and directed the RD Bataan to issue new certificates of title over the subject properties in the name of the Province of Bataan.[8] Pursuant to said Order, the RD Bataan cancelled the TCTs under BASECO's name and issued new certificates in favor of the Province of Bataan.[9]

The Province of Bataan thereafter leased the subject properties to R-Port Services, and the latter, in turn, ceded 10 hectares of

---

[5] Id. at 10. The details of the subject properties are as follows:

TCT Nos.	Registered Owner	Area
T-59628	Bataan Shipyard & Engineering Co., Inc.	180,000 sq. mts.
T-59629	Bataan Shipyard & Engineering Co., Inc.	501,031 sq. mts.
T-59631	Bataan Shipyard & Engineering Co., Inc.	489,028 sq. mts.
T-78745	Philippine Dockyard Corporation	86,294 sq. mts.
T-78746	Philippine Dockyard Corporation	98,700 sq. mts.
T-78747	Philippine Dockyard Corporation	200,800 sq. mts.
T-96945	Philippine Drydock & Const., Co., Inc.	934,313 sq. mts.
T-96946	Philippine Drydock & Const., Co., Inc.	408,202 sq. mts.
T-96947	Philippine Drydock & Const., Co., Inc.	106,736 sq. mts.

[6] Id. at 9.

[7] Id. at 10-11.

[8] Id. at 87-88.

[9] Id. at 11.

the subject properties to Marina Port Services, which entered into another lease contract for the said portion with the Province of Bataan.[10]

Nearly four years after the RTC Balanga ordered the consolidation of ownership over the subject properties to the Province of Bataan, or on May 14, 1993, the PCGG filed a complaint docketed as Civil Case No. 212-ML for the annulment of the tax delinquency sale of the subject properties with the RTC Balanga,[11] alleging that said sale was invalid since there was no showing that the notice of sale was published in accordance with law, or that said notice was otherwise sent to the PCGG or BASECO.[12] In this complaint, the PCGG further alleged that the subject properties sold were included in the sequestered properties subject of the complaint for Reconveyance, Reversion, Accounting, Restitution and Damages docketed as Civil Case No. 0010, which was then pending with the Sandiganbayan, First Division.[13]

Four years after the PCGG filed its complaint for the annulment of the tax sale, it filed a Motion for Summary Judgment.[14] However, when the same also remained unacted upon, the PCGG requested for a transfer of venue, and the same was granted, thereby transferring Civil Case No. 212-ML to RTC Makati, Branch 147 (RTC Makati).[15]

The RTC Makati granted the PCGG's Motion for Summary Judgment in its Decision[16] dated July 23, 2001 and declared the tax delinquency sale of the subject properties null and void. Consequently, the RTC Makati ordered the RD Bataan to cancel

---

[10] Id.

[11] Id. at 12.

[12] Id. at 19.

[13] Id.

[14] Id. at 12.

[15] Id. at 12-13.

[16] Id. at 89-93.

the certificates of title issued to the Province of Bataan, and reinstate the certificates of title in the name of BASECO.[17] However, Enrique T. Garcia, Jr. (private respondent Garcia), then in his capacity as Representative of the Second District of Bataan, and the Province of Bataan, both filed motions for reconsideration of the RTC Makati's July 23, 2001 Decision. The RTC Makati heeded these motions and through its Order dated December 18, 2001[18] recalled and set aside its earlier Decision, and further ordered the reception of evidence for the PCGG.[19]

At this point in the long dispute, both private respondent Garcia, on behalf of the Province of Bataan, and the PCGG, went to this Court with their petitions for review. Private respondent Garcia filed a Petition for Review[20] dated January 17, 2002 before this Court docketed as G.R. No. 151237, which prayed, among others, for the dismissal of Civil Case No. 212-ML.[21] The PCGG, for its part, filed a Petition for *Certiorari* docketed as G.R. No. 159199 which prayed for the reinstatement of the RTC Makati's Decision which annulled the tax delinquency sale.[22]

In this Court's Resolution dated June 22, 2005, both parties were required to explore the possibility of a compromise agreement. Pursuant to this, the *Sangguniang Panlalawigan* of Bataan (SP of Bataan), through its Resolution No. 71[23] dated June 6, 2005, authorized private respondent Garcia to negotiate and enter into a compromise agreement with the PCGG and BASECO involving the subject properties. On January 5, 2006,

---

[17] Id. at 93.

[18] Id. at 118-131.

[19] Id. at 13.

[20] Id. at 136-156.

[21] Id. at 156.

[22] Id. at 14.

[23] Id. at 159-160.

the PCGG, BASECO, and private respondent Garcia, on behalf of the Province of Bataan, entered into a Compromise Agreement.[24] With the Provincial Government of Bataan as the "First Party," the PCGG as the "Second Party" and BASECO as the "Third Party," said Agreement mainly provides for the creation of a corporation comprised of all three parties, and was set on the following terms:

1. The BASECO properties covered by the aforementioned Transfer Certificates of Title, acquired by the FIRST PARTY and disputed by the SECOND PARTY and the THIRD PARTY shall be transferred, conveyed and delivered to a corporation to be incorporated by the FIRST PARTY and the THIRD PARTY herein, within sixty (60) days from the Court approval of this Agreement. The subject properties shall thereafter form part of the corporate assets of the new corporation;

2. The FIRST PARTY shall own Fifty-One Percent (51%) of the shares of the new corporation, while the THIRD PARTY shall own Forty-Nine Percent (49%);

3. The SECOND PARTY shall continue to exercise all powers and prerogatives under the original writ of sequestration over the shares of the THIRD PARTY, **subject to the final disposition of Civil Case No. 0010, entitled *Republic of the Philippines vs. Alfredo (Bejo) Romualdez, et al.*, pending before the Sandiganbayan**. As such, the SECOND PARTY shall exercise powers and prerogatives not limited to the following:

   3.1. Appointment of a COMPTROLLER who shall be empowered to exercise any act/s necessary to prevent the destruction, disposal and dissipation of the shares of the THIRD PARTY in the new corporation.

   3.2. Representation of the SECOND PARTY in the new corporation's Board of Directors equivalent to its representation in the THIRD PARTY's Board.

4. The SECOND PARTY shall continue to exercise its duty as conservator over the shares of the THIRD PARTY in the

[24] Id. at 80-84; 53.

> new corporation through its designated Comptroller **until final disposition of Civil Case No. 0010, entitled *Republic of the Philippines vs. Alfredo (Bejo) Romualdez, et al.* pending before the Sandiganbayan**;
>
> All parties hereto agree to withdraw the amount held in escrow by the Regional Trial Court in Civil Case No. 212-ML in the amount of Two Hundred Eight Million Pesos ([₱]208,000,000.00), more or less, to be shared by the parties herein as follows: One Hundred Forty Million Pesos ([₱]140,000,000.00) shall, upon approval of this Compromise Agreement by the Supreme Court, go to the FIRST PARTY and the balance thereof, which in no case shall be less than Sixty Million Pesos ([₱]60,000,000.00) shall go [to] the THIRD PARTY; PROVIDED [t]hat the share of the FIRST PARTY may be reduced accordingly to complete the share of the THIRD PARTY in case the amount under escrow is not sufficient to cover the aforesaid amount of Sixty Million Pesos ([₱]60,000,000.00). After the approval of this Compromise Agreement, but prior to the transfer of the aforesaid BASECO properties to the new corporation, all the rental payments and fruits thereof shall be divided between the FIRST PARTY, who shall receive Fifty-One Percent (51%) and the SECOND PARTY, in trust for the THIRD PARTY, who shall receive Forty-Nine Percent (49%).
>
> x x x x.[25]

This Compromise Agreement was ratified by the SP of Bataan through its Resolution No. 38[26] dated March 6, 2006 and approved by the RTC Makati through its Judgment[27] dated September 27, 2006, after finding that the same was "not contrary to law, morals, public order and public policy."[28]

By virtue of having settled their dispute amicably, both private respondent Garcia and the PCGG filed a Joint Motion[29] dated

---

[25] Id. at 168-169. Emphasis supplied.

[26] Id. at 161-162.

[27] Id. at 166-170. Penned by Presiding Judge Maria Cristina J. Cornejo.

[28] Id. at 170.

[29] Id. at 171-175.

July 17, 2006 praying that their respective petitions before the Court in G.R. No. 151237 and G.R. No. 159199 be withdrawn, and that both cases be considered closed and terminated.[30] This Joint Motion was granted by the Court in its Resolution dated August 14, 2006.[31]

The Province of Bataan later moved for the early release of the partial amount representing the proceeds from the lease of the subject properties held in escrow by the RTC Balanga, and the latter granted the release of the amount of ₱140,000,000.00.[32] The PCGG and BASECO also filed a Joint Motion to release the remaining funds in escrow in the amount of ₱60,000,000.00 and the same was likewise granted.[33]

Present Controversy

The facts took a turn towards the case at bar when, on March 27, 2007, Oscar de los Reyes, a former mayor of the Municipality of Mariveles, Bataan, initiated a complaint before the Ombudsman against private respondent Garcia and the rest of the private respondents, as members of the SP of Bataan. The complaint anchored itself on the undue injury allegedly suffered by the Province of Bataan as a result of the grossly disadvantageous terms of the Compromise Agreement it entered into with the PCGG and BASECO.

On August 30, 2008, after preliminary investigation, the Ombudsman filed two Informations[34] against all private respondents for violation of Section 3 (e) and (g) of Republic Act No. (R.A.) 3019,[35] docketed as Criminal Cases Nos. SB-08-CRM-0410 and SB-08-CRM-0411, the accusatory portions of which provide:

---

[30] Id. at 173.

[31] Id. at 16.

[32] Id. at 17.

[33] Id. at 18.

[34] Id. at 177-181; 183-187.

[35] Otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT.

In SB-08-CRM-0410, for Section 3 (e), R.A. 3019:

That on or about 05 January 2006, or sometime prior or subsequent thereto, in Mandaluyong City and in Balanga, Bataan Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Enrique T. Garcia, Jr., Salary Grade 30, Governor of Bataan, Benjamin M. Alonzo, Salary Grade 28, the then Vice-Governor of Bataan, Edgardo P. Calimbas, Salary Grade 27, Board Member of Bataan, Fernando C. Austria, Salary Grade 27, Former Board Member of Bataan, Eduard G. Florendo, Salary Grade 27, Board Member, Rodolfo S. Salandanan, Salary Grade 27, Former Board Member of Bataan, Orlando S. Miranda, Salary Grade 27, Board Member of Bataan, Rodolfo SD. Izon, Salary Grade 27, Board Member of Bataan, Dante R. Manalaysay, Salary Grade 27, City Councilor of Bataan, Manuel M. Beltran, Salary Grade 27, Board Member of Bataan, all public officers committing the offense in the discharge of their official functions, and in grave abuse thereof, conspiring and confederating with one another through their separate but concerted acts, **with evident bad faith and gross inexcusable negligence, did then [,] and there willfully, unlawfully and criminally cause undue injury to the Provincial Government of Bataan by entering into a contract on behalf of the Provincial Government of Bataan with the Presidential Commission on Good Government (PCGG) and BASECO, Philippine Dockyard Corporation and the BASECO Drydock and Construction Co., Inc**.: accused members of the Sangguniang Panlalawigan, Benjamin M. Alonzo, Edgardo P. Calimbas, Fernando C. Austria, Eduard G. Florendo, Edward C. Roman, Rodolfo S. Salandanan, Orlando S. Miranda, Rodolfo SD. Izon, Dante R. Manalaysay, and Manuel N. Beltran passed Resolution [N]o. 71 dated 06 June 2005 authorizing Enrique T. Garcia, Jr. to enter into a Compromise Agreement and Resolution No. 38 dated 06 March 2006 ratifying the Compromise Agreement as Enrique T. Garcia, Jr. in fact entered into a Compromise Agreement dated 05 January 2006 which provides that 1) eight parcels of land registered in the name of the Province of Bataan under TCT Nos. 128452, 128453, 128454, 128455, 128456, 128457, 128459, 128460 of the Register of Deeds of Bataan shall be transferred and conveyed to a corporation to be incorporated by the Province of Bataan and BASECO where fifty-one (51%) of the shares shall be owned by the Province of Bataan while forty-nine percent (49%) shall be owned by BASECO, thereby effectively reducing the ownership of the Province of Bataan over the said properties by as much as forty-nine percent (49%)[;] 2) the

part of proceeds of the said properties owned by the Province of Bataan from rentals held in escrow by the court in the amount of not less than Sixty Million Pesos ([₱]60,000,000.00) be transferred to BASECO[;] and 3) all succeeding rentals or fruits derived from the said properties be divided by the Province of Bataan which shall receive fifty-one percent (51%) and the PCGG in trust for BASECO which shall receive forty-nine percent (49%) to the damage and prejudice of the Province of Bataan.

CONTRARY TO LAW.[36]

In SB-08-CRM-0411, for Section 3 (g), R.A. 3019:

That on or about 05 January 2006, or sometime prior or subsequent thereto, in Mandaluyong City and in Balanga, Bataan Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Enrique T. Garcia, Jr., Salary Grade 30, Governor of Bataan, Benjamin M. Alonzo, Salary Grade 28, the then Vice-Governor of Bataan, Edgardo P. Calimbas, Salary Grade 27, Board Member of Bataan, Fernando C. Austria, Salary Grade 27, Former Board Member of Bataan, Eduard G. Florendo, Salary Grade 27, Board Member, Rodolfo S. Salandanan, Salary Grade 27, Former Board Member of Bataan, Orlando S. Miranda, Salary Grade 27, Board Member of Bataan, Rodolfo SD. Izon, Salary Grade 27, Board Member of Bataan, Dante R. Manalaysay, Salary Grade 27, City Councilor of Bataan, Manuel M. Beltran, Salary Grade 27, Board Member of Bataan, all public officers conspiring, and confederating with one another through their separate but concerted acts, committing the crime in the discharge of their official functions, and in grave abuse thereof, did then[,] and there willfully, unlawfully and **criminally enter on behalf of the Provincial Government of Bataan into a contract with the Presidential Commission on Good Government (PCGG) and BASECO, Philippine Dockyard Corporation and the BASECO Drydock and Construction Co., Inc. which was manifestly and grossly disadvantageous to the Provincial Government of Bataan**: accused members of the Sangguniang Panlalawigan, Benjamin M. Alonzo, Edgardo P. Calimbas, Fernando C. Austria, Eduard G. Florendo, Edward C. Roman, Rodolfo S. Salandanan, Orlando S. Miranda, Rodolfo SD. Izon, Dante R. Manalaysay, and Manuel N. Beltran passed Resolution [N]o. 71 dated 06 June 2005 authorizing

---

[36] Id. at 177-180. Emphasis supplied.

Enrique T. Garcia, Jr. to enter into a Compromise Agreement and Resolution No. 38 dated 06 March 2006 ratifying the Compromise Agreement as Enrique T. Garcia, Jr. in fact entered into a Compromise Agreement dated 05 January 2006 which provides that 1) eight parcels of land registered in the name of the Province of Bataan under TCT Nos. 128452, 128453, 128454, 128455, 128456, 128457, 128459, 128460 of the Register of Deeds of Bataan shall be transferred and conveyed to a corporation to be incorporated by the Province of Bataan and BASECO where fifty-one (51%) of the shares shall be owned by the Province of Bataan while forty-nine percent (49%) shall be owned by BASECO, thereby effectively reducing the ownership of the Province of Bataan over the said properties by as much as forty-nine percent (49%)[;] 2) the part of proceeds of the said properties owned by the Province of Bataan from rentals held in escrow by the court in the amount of not less than Sixty Million Pesos ([₱]60,000,000.00) be transferred to BASECO[;] and 3) all succeeding rentals or fruits derived from the said properties be divided by the Province of Bataan which shall receive fifty-one percent (51%) and the PCGG in trust for BASECO which shall receive forty-nine percent (49%) to the damage and prejudice of the Province of Bataan.

CONTRARY TO LAW.[37]

Private respondents filed a Manifestation with Motion before the Sandiganbayan, asking the latter to resolve the judicial determination of probable cause, and that the same be dismissed for lack of merit.[38] They averred that the subject Compromise Agreement was not grossly disadvantageous to the Province of Bataan and did not cause the latter undue injury, and that the same was approved by the RTC Makati, which affirmed that it was not contrary to law, morals, public order, and public policy.[39] They likewise claimed that the Informations did not include all the persons who appear to be responsible for the

---

[37] Id. at 184-186. Emphasis supplied.

[38] Id. at 46.

[39] Id.

offense charged as mandated under Section 2, Rule 110 of the Revised Rules on Criminal Procedure.[40]

In petitioner's Comment,[41] petitioner countered that by private respondents' act of entering into the Compromise Agreement, the Province of Bataan suffered a reduction of its ownership over the properties.[42] Petitioner likewise submitted that notwithstanding the RTC Makati's approval of the Compromise Agreement, the same did not preclude the Ombudsman from exercising its powers of investigation and prosecution, since it is the one empowered by the Constitution to investigate, on its own, or upon a complaint, any act or omission of any public official, employee, office or agency, when the same appears to be illegal, unjust, improper or inefficient. Petitioner also argued that this Court, in its order regarding the exploration of the possibility of a compromise agreement, did not require the parties to actually enter into one which is manifestly disadvantageous to the government.[43]

In their Reply,[44] private respondents added that the Informations were capricious and whimsical with the exclusion of other provincial Board Members of Bataan who also signed the two Resolutions in question.[45]

In petitioner's Rejoinder, petitioner submits that prior to the Compromise Agreement, the Province of Bataan had a vested right and ownership over the subject properties. Petitioner further

---

[40] Section 2, Rule 110 of the RULES OF COURT provides:

SEC. 2. *The Complaint or information*. — The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved. (2a)

[41] *Rollo*, pp. 224-248.

[42] Id.

[43] Id. at 47.

[44] Id. at 262-276.

[45] Id.

reasoned that the exclusion of other provincial Board Members were due to the fact that they were not included in those charged before it, and therefore could not be covered by the preliminary investigation.[46]

Ruling of the Sandiganbayan

After trial on the merits, the Sandiganbayan, Third Division in its Resolution[47] dated August 7, 2009, found no probable cause to issue warrants of arrest against private respondents, and likewise dismissed the Informations filed against them. The dispositive portion of said Resolution reads:

> Accordingly, the Informations in Crim. Case No. 08 CRM-0410 for violation of Sec. 3(e) of RA 3019 and 08-CRM 0411 for violation of Sec. 3(g) of RA 3019 are ordered DISMISSED. The conditional arraignment and pleas of not guilty entered by Accused Enrique Tuason Garcia, Jr. and Manuel Naval Beltran in connection with their Motion to Travel are hereby set aside.
>
> **SO ORDERED.**[48]

In considering as the core issue whether or not the Province of Bataan had acquired a vested right over the subject properties ahead of the Compromise Agreement, which would determine whether said Agreement was in fact grossly disadvantageous to the interests of the Province of Bataan, the Sandiganbayan found that the Province of Bataan had no vested right over the subject properties at the time the Compromise Agreement was entered into, and therefore the Province of Bataan could not be said to have been prejudiced thereby.[49]

In finding that the Province of Bataan had no vested rights over the subject properties, the Sandiganbayan observed that the Republic's petition to annul the tax delinquency sale (Civil

---

[46] Id. at 48.

[47] Id. at 45-60.

[48] Id. at 58. Emphasis in the original.

[49] Id. at 54-55.

Case No. 212-ML), from which the Province of Bataan's alleged right over the properties could arise, had yet to be decided with finality.[50] In the same manner, the Sandiganbayan also noted that the case filed against Alberto Romualdez (Civil Case No. 0010), where the Republic sought the reconveyance of the subject properties in its favor, also remains pending in the Sandiganbayan. The Sandiganbayan cited the Ombudsman's own admission during the hearing for determination of probable cause that the right of the Province of Bataan had not yet vested:

JUSTICE VILLARUZ, JR.:

But you cannot just admit that the right of Bataan to the property has not yet been vested?

PROSECUTOR RAFAEL:

By virtue of the civil case, Your Honor. Yes, it is not yet definite.[51]

The Sandiganbayan held that considering that the rights of the Province of Bataan as owner of the subject properties had not been vested, the Ombudsman could not maintain that the Province of Bataan's ownership was 100%, that the same had been "reduced" by 49% by virtue of the Compromise Agreement, and that it could claim injury as a result of said reduction.[52] The Sandiganbayan further opined that it is even possible that the Province of Bataan could later be adjudged to have no entitlement over the subject properties in the pending case for annulment of the tax delinquency sale. In which event, by entering into the Compromise Agreement, the Province of Bataan would have, in effect, benefited therefrom. It added that a Compromise Agreement, when made as basis of a Judgment on Compromise by the courts, is accorded utmost respect, and has the force of *res judicata* between the parties therein.[53]

---

[50] Id. at 55.

[51] Id., citing Transcript of Stenographic Notes (TSN) dated December 8, 2008.

[52] Id. at 57.

[53] Id. at 57-58.

Proceeding from the above findings, the Sandiganbayan held that there was no probable cause for the issuance of the warrants of arrest against private respondents.[54]

Petitioner filed a Motion for Reconsideration,[55] and maintained that the Province of Bataan had already acquired vested rights to the subject properties,[56] and that the pendency of Civil Case No. 212-ML did not divest the Province of Bataan of said vested rights.[57]

The Sandiganbayan, in its Resolution[58] dated November 12, 2009, denied the Motion for Reconsideration for lack of merit.[59] It ruled that the subject properties were already involved in doubt or controversy even before the Province of Bataan allegedly acquired the right over the same. Particularly, it held that in 1986, the PCGG sequestered the subject properties, and to date, these same properties were the subject of pending proceedings before this Court for reconveyance to the Government.[60] In further negating the presence of vested rights in favor of the Province of Bataan, the Sandiganbayan reasoned:

> It is undisputed that in Civil Case No. 212-ML, the RTC nullified and voided the tax sale of the BASECO properties as well as the Order cancelling the titled of the original owners and the issuance of new titles to the Province of Bataan. The RTC likewise ordered the cancellation of the TCTs in favor of the Province of Bataan and the reinstatement of the TCTs of the original owners. While the Decision of the RTC was subject of a Motion for Reconsideration which was granted, the latter Court called for further hearings for the reception of evidence. Subsequently, both the Government and the Province of Bataan elevated the case to the Supreme Court which

---

[54] Id. at 58.

[55] Id. at 68-79.

[56] Id. at 69.

[57] Id. at 70-71.

[58] Id. at 61-66.

[59] Id. at 62.

[60] Id. at 63.

required the parties to explore the possibility of a compromise agreement.

The TCTs issued to the Province of Bataan having been cancelled, albeit the Motion for Reconsideration has remained unresolved, Prosecution's reliance on the TCTs as being source of vested rights must fail.[61]

It further rejected petitioner's reliance on the existence of TCTs, elaborating instead that TCTs do not, by themselves, vest ownership, but merely evidence the same.[62] It likewise ruled that the existence of the TCTs did not preclude a dispute as to ownership.[63]

Hence, the instant Petition.

Petitioner now seeks a reversal of the Sandiganbayan Resolutions dated August 7, 2009 and November 12, 2009, and the revival of Criminal Cases Nos. SB-08-CRM-0410 and SB-08-CRM-0411[64] on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan when: (1) it found no probable cause in the issuance of warrants of arrest against private respondents despite the fact that the latter ceded forty-nine percent (49%) of the properties of the Province of Bataan in favor of BASECO; (2) it failed to consider the temporary nature of the sequestration of the PCGG over the subject properties; and (3) it interfered with petitioner's exercise of discretion.[65]

Petitioner here once more argues that before the execution of the Compromise Agreement, the Province of Bataan enjoyed full ownership over the subject properties,[66] but that to its

---

[61] Id. at 64.

[62] Id. at 65, citing *Lee Tek Sheng v. Court of Appeals*, G.R. No. 115402, July 15, 1998, 292 SCRA 544.

[63] Id. at 66.

[64] Id. at 37.

[65] Id. at 22.

[66] Id. at 26.

disadvantage, private respondents not only ceded 49% of the subject properties to BASECO, but that it likewise surrendered ₱60,000,000.00 representing a substantial portion of the lease proceeds from said properties.[67] Petitioner also avers that the pendency of Civil Case No. 212-ML and Civil Case No. 0010 should not have been taken into consideration as they are immaterial in the Anti-Graft cases that were filed against private respondents.[68] Petitioner submits that private respondents acted in evident bad faith in entering into the Compromise Agreement since neither the PCGG nor BASECO had any valid claim against the subject properties.[69]

On the second ground of the Sandiganbayan's alleged failure to appreciate the temporary nature of sequestration proceedings, petitioner argues that should the sequestration order be determined as void in Civil Case No. 0010, or that otherwise the sequestered properties be determined to be not ill-gotten, then the Compromise Agreement effectively amounts to the ceding of the Province of Bataan's ownership over the subject properties.[70]

On the third and final ground of the Sandiganbayan's interference with petitioner's exercise of investigatory and prosecutorial power and discretion, petitioner maintains that a wide latitude is enjoyed by the Ombudsman, and the discretion to prosecute or dismiss a complaint filed before it is lodged with itself alone.[71]

In their Comment[72] dated April 12, 2010, private respondents, among others, counter that the present petition ought to be dismissed outright for being the wrong remedy to appeal a final

---

[67] Id. at 25.

[68] Id. at 26-29.

[69] Id. at 29.

[70] Id. at 34-35.

[71] Id. at 35.

[72] Id. at 224-248.

order of the Sandiganbayan which dismissed the criminal cases against them.[73] They submit that the present petition was only resorted to because petitioner failed to seasonably interpose an appeal under Rule 45, and that an action for *certiorari* could not be used as a substitute for an appeal already lost.[74] They also argue that the Sandiganbayan did not commit grave abuse of discretion since it clearly provided the basis for its dismissal of the Informations — that there was no probable cause to issue warrants of arrest against them since the Compromise Agreement was, in fact, not grossly disadvantageous nor injurious to the interests of the Province of Bataan.[75] They also maintain that the prosecutorial power of the Ombudsman was correctly interfered with by the Sandiganbayan in this case since said power was used more for persecution than prosecution.[76] Finally, they reiterate that the Compromise Agreement was not disadvantageous to the Province of Bataan, since the latter enjoyed no vested rights.[77]

In petitioner's Reply[78] dated December 20, 2010, petitioner adds that the petition for *certiorari* under Rule 65 was the proper remedy in this case, since the appeal under Rule 45 was insufficient to correct errors of jurisdiction.[79] Petitioner likewise maintains that the Province of Bataan enjoyed vested rights which were injured by the terms of the Compromise Agreement.[80]

Issue

The sole issue for the Court's resolution is whether the Sandiganbayan committed grave abuse of discretion amounting

---

[73] Id. at 225.

[74] Id. at 230-231.

[75] Id. at 233-234.

[76] Id. at 237-238.

[77] Id. at 241-242.

[78] Id. at 262-276.

[79] Id. at 264.

[80] Id. at 269.

to lack or excess of jurisdiction in finding no probable cause for the issuance of warrants of arrest against private respondents, and dismissing the Informations against the latter in Criminal Cases Nos. SB-08-CRM-0410 and SB-08-CRM-0411.

The Court's Ruling

The petition lacks merit and the Court sustains the Sandiganbayan.

First, the Court agrees with private respondents' submission that petitioner availed of the wrong remedy with the filing of the instant petition for *certiorari* under Rule 65 of the Rules of Court. Considering that the Resolution of the Sandiganbayan which dismissed the Informations against private respondents was a final order[81] that finally disposed of the case, the proper remedy therefrom is a petition for review under Rule 45 of the Rules of Court, Section 1 of which provides:

SECTION 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a)

In addition, Section 2 of the same Rule provides for the period within which to file the appeal:

---

[81] Sec. 7 of Presidential Decree No. (P.D.) 1606, as amended by Sec. 3 of R.A. 7975, states:

Section 7. *Form, Finality and Enforcement of Decisions*. —

x x x x

Decisions and final orders of the *Sandiganbayan* shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. Whenever, in any case decided by the *Sandiganbayan*, the penalty of *reclusion perpetua*, life imprisonment or death is imposed, the decision shall be appealable to the Supreme Court in the manner prescribed in the Rules of Court.

x x x x.

SEC. 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (1a, 5a)

In the case at bar, it appears that petitioner resorted to the special civil action of *certiorari* because petitioner failed to seasonably interpose an appeal. To note, the Sandiganbayan issued its Resolution on August 7, 2009. Petitioner filed a motion for reconsideration thereof on August 28, 2009, but the same was denied *via* the Sandiganbayan's Resolution dated November 12, 2009, a copy of which was received by petitioner on November 16, 2009.

Petitioner's remedy at that point should have been to file a petition for review on *certiorari* under Rule 45 before this Court, and, reckoning the 15-day period to file the same from receipt of the Resolution, petitioner had until December 1, 2009 to file said petition for *certiorari* before this Court. Instead, petitioner filed the instant petition for *certiorari* under Rule 65 on January 19, 2010 or 48 days after the lapse of the reglementary period within which to file an appeal *via* petition for review on *certiorari*. Petitioner resorted to the instant special civil action after failing to appeal within the 15-day reglementary period, and the same may not be allowed for, as the Court has held before, the special civil action of *certiorari* cannot be used as a substitute for an appeal which petitioner already lost.[82]

---

[82] See *The President, Philippine Deposit Insurance Corporation v. Court of Appeals*, G.R. No. 151280, June 10, 2004, 431 SCRA 682, 688; *Leynes v. Former Tenth Division of the Court of Appeals*, G.R. No. 154462, January 19, 2011, 640 SCRA 25, 42; *Active Realty and Development Corporation v. Fernandez*, G.R. No. 157186, October 19, 2007, 537 SCRA 116, 130; *Icdang v. Sandiganbayan (Second Division)*, G.R. No. 185960, January 25, 2012, 664 SCRA 253, 264; *International Exchange Bank v. Court of Appeals*, G.R. No. 165403, February 27, 2006, 483 SCRA 373, 380.

A special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy, and adequate remedy in the ordinary course of law and the same may not be entertained when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[83]

In this case, petitioner failed to demonstrate that the issue being raised in the present petition, *i.e.*, whether or not the Sandiganbayan committed grave abuse of discretion in dismissing the Informations in Criminal Case Nos. SB-08-CRM-0410 and SB-08-CRM-0411, could not have been raised on appeal.

Finally on this point, although the Court has, in some instances, treated petitions for *certiorari* under Rule 65 as having been filed under Rule 45 in the interest of justice,[84] the same may not be afforded petitioner in this case since the instant petition was filed after the lapse of the period for the filing of a petition for review.[85]

Second, even on the ground invoked by petitioner, *i.e.*, that the Sandiganbayan committed grave abuse of discretion in dismissing the Informations filed against private respondents, the present petition must still be denied.

---

[83] See *Agus Dwikarna v. Domingo*, G.R. No. 153454, July 4, 2004, 433 SCRA 748, 754; *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, G.R. No. 141008, January 16, 2001, 349 SCRA 321, 323-333; *Heirs of Pedro Atega v. Garilao*, G.R. No. 133806, April 20, 2001, 357 SCRA 203, 206; *Zarate, Jr. v. Olegario*, G.R. No. 90655, October 7, 1996, 263 SCRA 1, 9; *Solis v. National Labor Relations Commission*, G.R. No. 116175, October 28, 1996, 263 SCRA 629, 633-634; *People v. Sandiganbayan*, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216.

[84] *Republic v. Court of Appeals*, G.R. No. 129846, January 18, 2000, 322 SCRA 81, 87; *Delsan Transport Lines, Inc. v. Court of Appeals*, G.R. No. 112288, February 20, 1997, 268 SCRA 597, 605; *People v. Sandiganbayan*, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 217.

[85] *Heirs of Lourdes Potenciano Padilla v. Court of Appeals*, G.R. No. 147205, March 10, 2004, 425 SCRA 236, 242.

Private respondents here were charged before the Sandiganbayan with violations of Section 3 (e) and (g) of R.A. 3019 which provides:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

The sole issue of contention here is whether the Sandiganbayan committed grave abuse of discretion in holding that, given the protracted factual history of the present controversy, there was no probable cause to hold private respondents guilty of unlawful acts under Section 3 (e) and (g) of R.A. 3019. The precursor of this question goes into the very nature and effect of the Compromise Agreement which private respondents entered into on behalf of the Province of Bataan. This query, in turn, traces its roots back to the original issue of whether the Province of Bataan did, in fact and in law, enjoy vested rights over the subject properties as petitioner here claims.

There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of

jurisdiction.[86] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[87]

After a thoughtful and circumspect evaluation of the entire records of the case at bar, the Court finds that the Sandiganbayan did not commit grave abuse of discretion in dismissing the Informations against private respondents. In finding no grave abuse, the Court finds: (1) that at the time private respondents entered into the Compromise Agreement, the Province of Bataan did not enjoy any vested right over the subject properties, and therefore, private respondents could not have injured a right or interest that did not exist; and (2) that private respondents' decision to negotiate and enter into the Compromise Agreement with the PCGG and BASECO is their collective judgment call pursuant to the corporate powers of the local government unit, and may not be interfered with absent competent proof showing any ill motive on the part of private respondents.

Province of Bataan without a vested right over the subject properties

The absence of a vested right over the subject properties in favor of the Province of Bataan rises on two levels of pendency

---

[86] *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 616; *Rodson Philippines, Inc. v. Court of Appeals*, G.R. No. 141857, June 9, 2004, 431 SCRA 469, 480; *Matugas v. Commission on Elections*, G.R. No. 151944, January 20, 2004, 420 SCRA 365, 378; *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, G.R. No. 152568, February 16, 2004, 423 SCRA 122, 133; *Condo Suite Club Travel, Inc. v. NLRC*, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 686-687.

[87] *Batabor v. Commission on Elections*, G.R. No. 160428, July 21, 2004, 434 SCRA 630, 634; *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 133, citing *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998); *Lalican v. Vergara*, 342 Phil. 485, 495 (1997); *Pure Foods Corporation v. National Labor Relations Commission*, G.R. No. 78591, March 21, 1989, 171 SCRA 415, 426; *Palma v. Q & S, Inc.*, 123 Phil. 958, 960 (1966).

of issues and inconclusiveness of rights, given the pendency of Civil Case No. 212-ML (annulment of tax sale) and Civil Case No. 0010 (sequestration case).

First, the validity of the tax delinquency sale which transferred the title over the subject properties from BASECO to the Province of Bataan remains in question, as the PCGG's petition for annulment of said tax sale is still pending with the RTC Makati in Civil Case No. 212-ML. To date and as far as the records show, the last resolution made in this case is the RTC Makati recalling its Summary Judgment and ordering further reception of evidence for the PCGG. There is therefore, as yet no final determination of whether the transfer of the subject properties to the Province of Bataan was valid, to begin with. It is also important to note that from the RTC Makati's Order for reception of evidence for the PCGG, both the Province of Bataan and the PCGG resorted to this Court and, **upon the Court's instruction**, eventually entered into the Compromise Agreement.

Contrary to petitioner's submission, therefore, the right of the Province of Bataan over the subject properties is far from vested. Instead, said right over the subject properties has always been in dispute.

Second, even if a finding of a vested right in favor of the Province of Bataan is obtained in Civil Case No. 212-ML, such right nevertheless remains subject to the pendency and resolution of the 1986 sequestration case in Civil Case No. 0010, which covers BASECO properties including the subject properties in the case at bar. With the sequestration order annotated in the memorandum of encumbrances in the TCTs issued in favor of BASECO, the final resolution of the sequestration case therefore remains a legal caveat to all parties who may deal with the subject properties.

In *Philippine Overseas Telecommunications Corporation (POTC) v. Sandiganbayan (3rd Division)*,[88] the Court explained

[88] G.R. No. 174462, February 10, 2016, 783 SCRA 425.

the necessary as well as provisional nature of sequestration, *viz.*:

To effectively recover all ill-gotten wealth amassed by former President Marcos and his cronies, the President granted the PCGG, among others, power and authority to sequester, provisionally take over or freeze suspected ill-gotten wealth. The subject of the present case is the extent of PCGG's power to sequester.

Sequestration is the means to place or cause to be placed under the PCGG's possession or control properties, building or office, including business enterprises and entities, for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten."

However, the power of the PCGG to sequester is merely provisional. None other than Executive Order No. 1, Section 3(c) expressly provides for the provisional nature of sequestration, to wit:

> c) To **provisionally** take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.[89]

In the case of *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*,[90] the Court elucidated on the effect of the sequestration proceedings over the properties sequestered:

x x x Nor may it be gainsaid that pending the institution of the suits for the recovery of such "ill-gotten wealth" as the evidence at hand may reveal, there is an obvious and imperative need for preliminary, provisional measures to prevent the concealment, disappearance, destruction, dissipation, or loss of the assets and properties subject of the suits, or to restrain or foil acts that may

---

[89] Id. at 441-442. Emphasis supplied.

[90] G.R. No. 75885, May 27, 1987, 150 SCRA 181.

render moot and academic, or effectively hamper, delay, or negate efforts to recover the same.

7. *Provisional Remedies Prescribed by Law*

To answer this need, the law has prescribed three (3) provisional remedies. These are: (1) sequestration; (2) freeze orders; and (3) provisional takeover.

Sequestration and freezing are remedies applicable generally to unearthed instances of "ill-gotten wealth." The remedy of "provisional takeover" is peculiar to cases where "business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos."

a. Sequestration

By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities," — for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same — until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," [*i.e.*], acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.[91]

In the case at bar, the Province of Bataan's ownership over the subject properties, apart from it being disputed in Civil Case No. 212-ML, is likewise still subject to the resolution of the sequestration case in Civil Case No. 0010.

Given these two tiers of pendency of determination of rights which cover the subject properties, the Province of Bataan cannot

---

[91] Id. at 208-209. Italics in the original.

be deemed to have enjoyed vested rights over the same. Contrary to petitioner's reasoning, Civil Case No. 212-ML and Civil Case No. 0010 are *not* immaterial to the validity and propriety of the Compromise Agreement, as they are tightly interwoven with the issue at hand.

More so, the Province of Bataan may not be considered to have enjoyed vested rights so certain that a reduction of the same could support a criminal prosecution, as in this case. Once more, since the Province of Bataan did not have a right *in esse* over the subject properties, its interest could not be said to have been so permanent that the concessions made by it in the Compromise Agreement were grossly disadvantageous to its interests as to merit the criminal prosecution of private respondents for violation of Section 3 (e) and (g) of R.A. 3019. The Sandiganbayan, therefore, ruled well within its jurisdiction when it determined lack of probable cause in the issuance of warrants of arrest against private respondents, and dismissed the Informations in the face of apparent absence of legal ground to stand on.

Lastly, the issue of propriety and good faith in private respondents' act of entering into the Compromise Agreement was not an isolated incident that only took into consideration the duties of their public office *vis-à-vis* the property interests of their province. Contrarily, said question found itself within a farsighted and complex context of other simultaneous legal disputes that included the validity of a tax sale and the more penultimate dispute of sequestration and recovery of suspected ill-gotten wealth.

Since the propriety of the terms of the Compromise Agreement rise and fall on the nature of the right that the Province of Bataan enjoyed over the subject properties, and since said right has been adjudged as questionable or otherwise in dispute, the criminal prosecution of herein private respondents stand on shifting factual grounds, and was therefore correctly dismissed.

Entering into the Compromise
Agreement is within the corporate

powers of the local government unit represented by private respondents

Private respondents' act of authorizing, entering into and ratifying the Compromise Agreement are well within their authorities under R.A. 7160.[92] Contrary to the evident bad faith or gross negligence that Section 3 (e) requires, the records reveal that private respondents considered entering into the Compromise Agreement in order to settle the longstanding case once and for all, and secure for the province a majority interest over the subject properties that, otherwise, would have remained in legal limbo. The whereas clause of the *Sangguniang Panlalawigan*'s Resolution No. 38, which authorized private respondent Garcia to negotiate the said Compromise Agreement, provides for private respondents' purpose, to wit:

"WHEREAS, the Province of Bataan acquired the sequestered BASECO properties located in Mariveles, Bataan, covered by T.C.T. Nos. T-128452, T-128453, T-128454, T-128455, T-128456, T-128457, T-128458, T-128459 and T-128460, through a tax auction sale on February 12, 1988 for non-payment of real property tax;

WHEREAS, the PCGG and BASECO contested the said auction sale and filed Civil Case No. 212-ML;

WHEREAS, the incidents in the said Civil Case were raised to the Supreme Court through petitions for [*certiorari*] in G.R. Nos. 151237 and 159199;

WHEREAS, **the foregoing case has been pending for more than TWELVE (12) YEARS now without any indication of resolution in the near future;**

WHEREAS, the Supreme Court in its Order dated 22 June 2005 in G.R. Nos. 151237 and 159199, required the parties therein to explore the possibility of a compromise settlement;

WHEREAS, an equitable conclusion of the claims of the parties involved will serve both the interests of the Province of Bataan and its constituents, and that of the nation as a whole;

---

[92] Otherwise known as the LOCAL GOVERNMENT CODE.

x x x x."[93]

As can be discerned in the above whereas clauses, the impetus of private respondents in authorizing private respondent Garcia to enter into the Compromise Agreement is the farsighted view of what may predictably be a long-drawn litigation over the subject properties, without any assurance that the interest of the province would prevail. Conceivably, therefore, what becomes more evident is that private respondents entered into the Compromise Agreement in order to secure and guarantee the province's interest, against the prospect of protracted uncertainty. Without showing any evil motive on the part of private respondents, this act appears to be in full consonance with their sworn duties and authority.

Specifically, Section 468 (a) of R.A. 7160 authorizes the *Sangguniang Panlalawigan* to pass resolutions and ordinances for the welfare of the province, *viz.*:

SECTION 468. *Powers, Duties, Functions and Compensation*. — (a) The [*Sangguniang Panlalawigan*], as the legislative body of the province, shall enact ordinances, **approve resolutions** and appropriate funds **for the general welfare of the province and its inhabitants** pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the province as provided for under Section 22 of this Code x x x. (Emphasis supplied)

Demonstrably, private respondents' objective of securing on behalf of the Province of Bataan majority interest over the subject properties falls squarely within the definition of protecting the "general welfare" of their constituents, as defined under Section 16 of R.A. 7160:

SECTION 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support,

---

[93] *Rollo*, pp. 161-162. Emphasis supplied.

among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Still more, private respondents' act of entering into the Compromise Agreement with the purpose of ensuring the general welfare of the province by guaranteeing the province's proprietary interest over the subject properties is most consistent with the authorities granted to their offices under Sections 18 and 22 of R.A. 7160, on generating and applying resources and their corporate powers, respectively, to wit:

SECTION 18. *Power to Generate and Apply Resources*. — Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits; **to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions** and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals. (Emphasis supplied)

SECTION 22. *Corporate Powers*. — (a) Every local government unit, as a corporation, shall have the following powers:

(1) To have continuous succession in its corporate name;
(2) To sue and be sued;
(3) To have and use a corporate seal;

(4) To acquire and convey real or personal property;
(5) To enter into contracts; and
(6) **To exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws.**

(b) Local government units may continue using, modify, or change their existing corporate seals: *Provided*, That newly established local government units or those without corporate seals may create their own corporate seals which shall be registered with the Department of the Interior and Local Government: *Provided, further*, That any change of corporate seal shall also be registered as provided hereon.

(c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the [*Sanggunian*] concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.

(d) Local government units shall enjoy full autonomy in the exercise of their proprietary functions and in the management of their economic enterprises, subject to the limitations provided in this Code and other applicable laws. (Emphasis supplied)

In order to challenge and interfere with this corporate prerogative of the local government unit, ill motive must be shown. To be sure, such ill motive was not shown, much less alleged, in petitioner's submissions. What's more, the Court finds that the records of the case at bar are bereft of any showing of ill motive that may have underpinned private respondents' act of negotiating and entering into the Compromise Agreement. Absent a showing of such, the *Sangguniang Panlalawigan*'s exercise of its discretion in authorizing private respondent Garcia, as the local chief executive, to negotiate and enter into the Compromise Agreement may not be made a basis for criminal prosecution.

The importance of affording local government units with a wide latitude through a liberal interpretation of the "general welfare" clause under Section 16 of R.A. 7160, was iterated in *Ferrer, Jr. v. Bautista*:[94]

[94] G.R. No. 210551, June 30, 2015, 760 SCRA 652.

The general welfare clause is the delegation in statutory form of the police power of the State to LGUs. **The provisions related thereto are liberally interpreted to give more powers to LGUs in accelerating economic development and upgrading the quality of life for the people in the community. Wide discretion is vested on the legislative authority to determine not only what the interests of the public require but also what measures are necessary for the protection of such interests since the *Sanggunian* is in the best position to determine the needs of its constituents.**[95]

Stated differently, local chief executives and local legislative bodies are necessarily given enough elbow room to navigate and respond to the different community-based needs and challenges that vary per constituency. The crucial flexibility of these offices, designed no less by R.A. 7160, is defeated when each decision that they make on behalf of their constituency pursuant to their corporate powers are constantly threatened by prospects of criminal backlash after the fact.

Absolutely, public office being a public trust, elected officials must be made to account for any failure, irregularity or corruption in the discharge of the duties of their office. However, absent clear proof of ill motive, these criminal prosecutions achieve no more than paralyze locally elected officials into inaction, shortchange the people, and straitjacket public service. This could not be farther from what R.A. 7160 intended. Absent proof of nefarious motives, local elective officials must, as was intended, be given the space they need to capably step into the shoes of the public offices they have been elected to, without the constant fear of a Damocles sword hanging over their heads.

WHEREFORE, the instant Petition is **DISMISSED**. The Sandiganbayan, Third Division Resolutions dated August 7, 2009 and November 12, 2009 in Criminal Cases Nos. SB-08-CRM-0410 and SB-08-CRM-0411 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Zalameda, and *Gaerlan, JJ.*, concur.

Carandang,[*] *J.*, on official leave.

---

[95] *Id.* at 713. Emphasis supplied.

THIRD DIVISION

[G.R. No. 200484. November 18, 2020]

PASCUAL PURISIMA, JR., LEONARDO PURISIMA, EUFRATA PURISIMA, and ESTELITA DAGUIO, *Petitioners, v.* **MACARIA PURISIMA and SPOUSES ERLINDA and DANIEL MEDRANO,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; WHILE THERE ARE EXCEPTIONS TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION, THE PETITIONER MUST FULLY EXPLAIN WHY THE SAID RULE MUST BE RELAXED.—[A] Petition for Review on *Certiorari* is a remedy under the law which is confined to settling questions of law and not questions of facts. The settled rule is that only questions of law may be raised in a petition under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. Thus, the resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. However, this Court may take exceptions . . . .

A question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties. Delving on questions of facts is merely discretionary on this Court and subject only to the limited exceptions as stated above.

Hence, petitioners must not merely allege the grounds for exceptions but must fully explain why the rule must be relaxed.

2. ID.; ID.; ID.; CONFLICTING FACTUAL FINDINGS; THE FACTUAL FINDINGS OF THE COURT OF APPEALS WHICH ARE BASED ON SUBSTANTIAL EVIDENCE ARE

BINDING ON THE SUPREME COURT EVEN IF THEY ARE CONTRARY TO THOSE OF THE TRIAL COURT.— It should bear stressing that while the factual findings of the appellate court are contrary to those of the trial court, this alone does not automatically warrant a review of factual findings by this Court. In *Uniland Resources v. Development Bank of the Philippines*, we held:

> It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. **It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence.** While the foregoing doctrine is not absolute, petitioner has not sufficiently proved that his case falls under the known exceptions.

3. CIVIL LAW; CONTRACTS; SALE; PAYMENT OF PURCHASE PRICE.—[E]ven if we relax the rules and review the Petition on its merits, it would still fail. The RTC and the CA were one in finding that there was a consideration in the 1960 sale between Purisima, Sr., on the one hand, and the respondents, on the other hand. While both lower courts agreed that indeed the respondents had given monetary consideration to the deceased Purisima, Sr. during his lifetime, variance on its application arose.

All the same, we subscribe to the findings of the trial court that indeed there was a valid consideration in the sale that transpired in 1960. The testimonies of the parties were consistent that Purisima Sr. received the amounts for the purchase of the apportioned lots. Further, respondents at the outset have already established that payments were made because Purisima, Sr. was in dire need of money due to his poor health condition.We do not see how this would affect or be in conflict with the validity of the payment already given. Hence, for all intents and purposes, payment for the purchase price of the property was already given.

4. ID.; ID.; STATUTE OF FRAUDS; THE STATUTE OF FRAUDS IS APPLICABLE ONLY TO EXECUTORY CONTRACTS, NOT TO TOTALLY OR PARTIALLY PERFORMED CONTRACTS.— The CA was . . . correct in not applying the Statute of Frauds in the case at bar. The Statute of Frauds affects merely the enforceability of the contract. In the early case of *Iñigo v. Estate of Adriana Maloto*, this Court elucidated on when the Statute of Frauds *vis-a-vis* a contract of sale would be inapplicable:

> **By Article 1403 (2) (e) of the Civil Code, a verbal contract for the sale of real property is unenforceable, unless ratified. For such contract offends the Statute of Frauds. <u>But long accepted and well settled is the rule that the Statute of Frauds is applicable only to executory contracts - not to contracts either totally or partially performed.</u>**

There can be no escaping the fact that the sale between the respondents and Purisima Sr. was consummated and that the Statute of Frauds has no application in the case. Verily, a contract of sale, whether oral or written, is classified as a consensual contract, which means that the sale is perfected by mere consent and no particular form is required for its validity. The 1960 oral sale thus stands and all its consequences under the law are thus binding to the parties and their successors-in-interest.

5. ID.; ID.; SALES; IN EVERY CONTRACT OF SALE, THERE IS TRANSFER OF OWNERSHIP IN EXCHANGE FOR A PRICE PAID OR PROMISED.— Consequent to every sale is the transfer of ownership in exchange for a price paid or promised. This may be gleaned from Article 1458 of the Civil Code which defines a contract of sale as follows:

> Art. 1458. By the contract of sale one of the contracting parties obligates himself **to transfer the ownership** and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

Inevitably then, the transfer of the properties to respondents arising from the 1960 sale by Purisima Sr. of the apportioned properties effectively vested ownership to the respondents from that time. Inasmuch as there was no dispute as to the fact that the apportioned properties were in the possession of the

respondents, the CA correctly ordered its reconveyance to the respondents, notwithstanding the subsequent issuance of the OCT in favor of the petitioners.

APPEARANCES OF COUNSEL

Eric John S. Calagui for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

HERNANDO, *J.*:

On appeal is the September 23, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 92001, reversing and setting aside the September 8, 2008 Decision[2] of the Regional Trial Court (RTC), Branch 11 of Tuao, Cagayan in Civil Case No. 355-T which dismissed the complaint for reconveyance, cancellation and quieting of title of herein respondents.

Factual antecedents:

On November 8, 1999, Macaria Purisima (Macaria) and the Spouses Erlinda and Daniel Medrano (Spouses Medrano; respondents, collectively) filed a complaint[3] for reconveyance, cancellation and quieting of title against their late brother's heirs, Pascual Purisima, Jr. (Purisima Jr.), Leonardo Purisima, Eufrata Purisima and Estelita Daguio, (collectively, petitioners).

Respondents alleged that their brother, Pascual Purisima Sr. (Pascual Sr.), owned Lot 71, PLS-631-D located in Cagumitan, Tuao, Cagayan. However, sometime in 1960, Pascual Sr. sold

---

[1] *Rollo*, pp. 31-44; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[2] Id. at 51-58; penned by Judge Orlando D. Beltran.

[3] Records, pp. 1-5.

portions of the aforesaid property to respondents to answer for his medical bills.[4]

At the time of the sale, the whole land was not yet titled but it was surveyed for a patent application under Purisima Sr.'s name by the Land Management Bureau on April 21, 1960. The following portions that were sold to the respondents were thus identified:[5]

Lot 71-A, Pls-D containing an area approximately Three Thousand Five Hundred and Seven (3,507) square meters, and;

Lot 71-B, Pls-631-D containing an area of Three Thousand Five Hundred Twenty-Five (3,525) square meters.[6]

Banking on mutual trust, the survey as well as the sale was not recorded by the parties. Since the 1960s and prior to the death of Purisima Sr. on April 12, 1971, respondents had been in open, continuous and exclusive possession of the apportioned properties. They had been paying realty taxes[7] thereon and had their own tenants tilling their respective portions of land.

On September 19, 1978, petitioners, as heirs of Pascual Sr., executed an *Extrajudicial Settlement of Estate of Deceased, Pascual Purisima and Sale*[8] over the unregistered property of their father which included the sale of the properties apportioned to the respondents.[9]

On December 16, 1991, Purisima Jr. was granted Free Patent No. 021528-91-2459 under the name of "Heirs of Pascual Sr.". The free patent covered the whole of Lot 71, including the portions that were already sold to the respondents.[10]

---

[4] *Rollo*, p. 80.

[5] Records, p. 2.

[6] Id. at 1.

[7] Id. at 11.

[8] Id. at 6.

[9] Id. at 2.

[10] Id. at 2-3.

On August 17, 1992, the Free Patent was later on registered with the Registry of Deeds of Tuao, Cagayan and Original Certificate of Title (OCT) No. P-5968[11] was issued in favor of the "Heirs of Pascual Purisima Sr. rep. by Pascual Purisima Jr.".[12]

Upon learning of the inclusion of their land in the extrajudicial settlement, respondents repeatedly requested Purisima Jr. to surrender OCT P-5968 in order to annotate the *Extrajudicial Settlement of Estate of Deceased, Pascual Purisima, Sr. and Sale*, register the previous subdivision plan and finally secure their own titles covering their respective lots.[13]

However, petitioners ignored respondents' pleas and despite barangay conciliation proceedings, the parties failed to reach an amicable settlement.[14] Hence, respondents filed a case before the RTC to remove the cloud on their title over the apportioned lots and for their ownership to be not disturbed.[15]

The petitioners, on the other hand, countered that there was no sale that transpired at any given time. The amounts given by the respondents were due to the fact that their father was sick.[16]

Admittedly, while they all signed the *Extrajudicial Settlement of Estate of Deceased, Pascual Purisima, Sr. and Sale*, they did not understand its import and were convinced by the respondents, their aunts, that the document was merely an evidence of their indebtedness. They did not appear before a notary public in the execution thereof nor were they given a copy of the said document.[17]

---

[11] Id. at 18.

[12] Id.

[13] Id. at 3.

[14] Id.

[15] Id. at 3-4.

[16] Id. at 32.

[17] Id.

Purisima Jr. further testified that he went through the legal process of applying for a free patent and the eventual obtainment of OCT. Throughout the whole process he did not hear of any complaints from the respondents.[18]

The only time that petitioners allowed the respondents to take possession of the property was only after the issuance of the OCT already and even then, it was by mere tolerance and as a form of payment for the financial help that respondents extended to their father.[19]

Ruling of the Regional Trial Court:

After due hearings, the RTC rendered a Decision dismissing the complaint for lack of written evidence of sale of the properties. The trial court further held that even if there were a sale that transpired, it was not enforceable since it was not embodied in a written document.[20] The dispositive portion of the September 8, 2008 RTC Decision reads:

> WHEREFORE, in view of all the foregoing, the Court finds that the evidence on record preponderates in favor of the defendants and against the plaintiffs and hereby orders the above-entitled case DISMISSED. The counterclaim is also DISMISSED. No pronouncement as to costs.
>
> SO ORDERED.[21]

Ruling of the Court of Appeals:

The appellate court gave credence to the evidence presented by the respondents and found that the reconveyance of the apportioned properties was proper.[22]

The CA held that the respondents were the rightful owners of the apportioned lots that have been included in OCT No. P-

---

[18] Id. at 31-32.

[19] Id. at 32.

[20] *Rollo*, pp. 55-56.

[21] Id. at 58.

[22] Id. at 35.

5968. The 1978 *Extrajudicial Settlement of Estate of Deceased, Pascual Purisima, Sr. and Sale* confirmed that the apportioned properties were sold to the respondents and the signatures of the petitioners therein clearly signified their conformity to the sale. While petitioners contend that they were persuaded by the respondents to sign the deed due to the misrepresentation by the latter that it was a mere deed of real estate mortgage, they nevertheless did not dispute its validity and due execution.[23] This fact weighs heavily against them.

More importantly, the trial court erred in concluding that the 1960 sale was void since it was not reduced into writing. The Statute of Frauds, which requires a written instrument for the enforceability of certain contracts, applies only to executory contracts, not to consummated contracts. The 1960 sale has been consummated as evidenced by its express recognition in the 1978 *Extrajudicial Settlement of Estate of Deceased, Pascual Purisima, Sr. and Sale*.[24]

While the certificate of title in favor of the petitioners can be regarded as indefeasible and binding to the whole world, it still did not create or vest a title on them. Hence, reconveyance in this case was proper and since respondents were in possession of the property, the action for reconveyance would be imprescriptible.[25] The dispositive portion of the appellate court's Decision stated:

IN LIGHT OF THE FOREGOING, premises considered, the instant appeal is **GRANTED**. Accordingly, the Decision of the RTC, Branch 11 of Tuao, Cagayan promulgated on September 8, 2008 in Civil Case No. 355-T is hereby ***REVERSED and SET ASIDE***. Thus, herein defendants-appellees are hereby ordered to transfer ownership and place in possession herein plaintiffs-appellants to the parcels of land belonging to the latter, specifically Lots 71-A & 71-B situated at Cagumitan, Tuao, Cagayan.

---

[23] Id. at 35-36.

[24] Id. at 36-37.

[25] Id. at 39.

SO ORDERED.[26] (Emphasis in the original)

Aggrieved, petitioners brought the case before Us, raising the following.

Issues

I. The Honorable [CA] gravely and seriously erred by failing to notice certain relevant facts, which, if properly considered, will justify a different conclusion and by misappreciating the facts in ruling that there was a sale on the strength of the 1978 Extra Judicial Settlement [of Estate and Deed of] Sale.

II. The Honorable [CA] gravely and seriously erred in predicating its finding of sale on the 1978 Extra Judicial Settlement [of Estate and Deed of] Sale since said document is a mere confirmation of the alleged 1960 Sale which is null and void.

III. The Honorable [CA] gravely and seriously erred in allowing an attack on petitioners[‘] title when said title was already indefeasible.[27]

Our Ruling

The Petition is denied.

We emphasize at the outset that a Petition for Review on *Certiorari* is a remedy under the law which is confined to settling questions of law and not questions of facts. The settled rule is that only questions of law may be raised in a petition under Rule 45 of the Rules of Court. It is not this Court’s function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. Thus, the resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. However, this Court may take exceptions when:

(1) the conclusion is grounded on speculations, surmises or conjectures;

---

[26] Id. at 42-43.

[27] Id. at 12.

(2) the inference is manifestly mistaken, absurd or impossible;

(3) there is grave abuse of discretion;

(4) the judgment is based on a misapprehension of facts;

(5) the findings of fact are conflicting;

(6) there is no citation of specific evidence on which the factual findings are based;

(7) the findings of absence of fact are contradicted by the presence of evidence on record;

(8) the findings of the CA are contrary to those of the trial court;

(9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;

(10) the findings of the CA are beyond the issues of the case; and

(11) such findings are contrary to the admissions of both parties.[28]

A question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[29] Delving on questions of facts is merely discretionary on this Court and subject only to the limited exceptions as stated above. Hence, petitioners must not merely allege the grounds for exceptions but must fully explain why the rule must be relaxed.

It should bear stressing that while the factual findings of the appellate court are contrary to those of the trial court, this alone does not automatically warrant a review of factual findings by

---

[28] *Bernas v. The Estate of Felipe Yu Han Yat*, G.R. Nos. 195908 & 195910, August 15, 2018.

[29] *Ignacio v. Ragasa*, G.R. No. 227896, January 29, 2020.

this Court.[30] In *Uniland Resources v. Development Bank of the Philippines*,[31] we held:

> It bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. **It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence.** While the foregoing doctrine is not absolute, petitioner has not sufficiently proved that his case falls under the known exceptions.[32] (Citations omitted, Emphasis Ours)

Here, the issues raised by the petitioners essentially ask this Court to review the evidence presented during the trial. Clearly, this is not the role of this Court because the issues presented are factual in nature. Petitioners allege that the CA and RTC made conflicting factual findings and that the appellate court failed to notice certain relevant facts which if properly considered, would justify a different conclusion. They also aver that the CA's findings of fact are contradicted by the evidence.[33] A careful review of the Petition, however, reveals that the petitioners utterly failed to substantiate their arguments. On this ground alone, the Petition must be denied.

Nevertheless, even if we relax the rules and review the Petition on its merits, it would still fail. The RTC and the CA were one in finding that there was a consideration in the 1960 sale between Purisima, Sr., on the one hand, and the respondents, on the other hand. While both lower courts agreed that indeed the respondents had given monetary consideration to the deceased

---

[30] See *Pascual v. Burgos*, 776 Phil. 167, 188 (2016).

[31] 277 Phil. 839 (1991).

[32] Id. at 844.

[33] *Rollo*, p. 4.

Purisima, Sr. during his lifetime, variance on its application arose.

All the same, we subscribe to the findings of the trial court that indeed there was a valid consideration in the sale that transpired in 1960.[34] The testimonies of the parties were consistent that Purisima Sr.[35] received the amounts for the purchase of the apportioned lots. Further, respondents at the outset have already established that payments were made because Purisima, Sr. was in dire need of money due to his poor health condition.[36] We do not see how this would affect or be in conflict with the validity of the payment already given. Hence, for all intents and purposes, payment for the purchase price of the property was already given.

The CA was likewise correct in not applying the Statute of Frauds in the case at bar. The Statute of Frauds affects merely the enforceability of the contract. In the early case of *Iñigo v. Estate of Adriana Maloto*,[37] this Court elucidated on when the Statute of Frauds *vis-a-vis* a contract of sale would be inapplicable:

> **By Article 1403 (2) (e) of the Civil Code, a verbal contract for the sale of real property is unenforceable, unless ratified. For such contract offends the Statute of Frauds. <u>But long accepted and well settled is the rule that the Statute of Frauds is applicable only to executory contracts — not to contracts either totally or partially performed.</u>** The complaint here states that the deceased Adriana Maloto sold the disputed house and land to plaintiff; that consideration thereof was paid; that by reason of such sale, plaintiff performed acts of ownership thereon. **The facts thus alleged are constitutive of a consummated contract. It matters not that neither the receipt for the consideration nor the sale itself was in writing. Because "oral evidence of the alleged consummated sale of the**

---

[34] Id. at 56.

[35] TSN, January 15, 2003, p. 8; TSN, December 13, 2005, pp. 13-16.

[36] Records, p. 2.

[37] 128 Phil. 279 (1967).

land" is not forbidden by the Statute of Frauds and may not be excluded in court.[38] (Emphasis Ours; Citations omitted)

As it is, the 1960 oral sale was already fully consummated as evidenced by the 1978 *Extrajudicial Settlement of Estate of Deceased, Pascual Purisima, Sr. and Sale*[39] which was undisputed and acknowledged by the petitioners themselves, and as established by the pieces of evidence presented by the respondents such as the testimonies of their tenants and other documentary evidence.[40]

There can be no escaping the fact that the sale between the respondents and Purisima Sr. was consummated and that the Statute of Frauds has no application in the case. Verily, a contract of sale, whether oral or written, is classified as a consensual contract, which means that the sale is perfected by mere consent and no particular form is required for its validity. The 1960 oral sale thus stands and all its consequences under the law are thus binding to the parties and their successors-in-interest.

Consequent to every sale is the transfer of ownership in exchange for a price paid or promised. This may be gleaned from Article 1458 of the Civil Code which defines a contract of sale as follows:

> Art. 1458. By the contract of sale one of the contracting parties obligates himself **to transfer the ownership** and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. (Emphasis Ours)

Inevitably then, the transfer of the properties to respondents arising from the 1960 sale by Purisima Sr. of the apportioned properties effectively vested ownership to the respondents from that time. Inasmuch as there was no dispute as to the fact that the apportioned properties were in the possession of the

---

[38] Id. at 281-282.

[39] Records, p. 6.

[40] *Rollo*, pp. 52-53; 83-84.

respondents, the CA correctly ordered its reconveyance to the respondents, notwithstanding the subsequent issuance of the OCT in favor of the petitioners. We quote with approval the findings of the CA:

> While the certificate of title in favor of defendants-appellees is indefeasible, unassailable and binding against the whole world, including government itself, it does not create or vest title. It merely confirms or records title already existing and vested. It cannot be used to protect a usurper from the true owner, nor can it be used as shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Although a review of the decree of registration is no longer available on account of the expiration of the one-year period from entry thereof, an equitable remedy is still available to plaintiffs-appellants who were wrongfully deprived of their property, i.e., to compel defendants-appellees to reconvey the property to the former, provided that the same has not yet been transferred to innocent persons for value.
>
> In a number of cases, the Court has ordered reconveyance of property to the true owner or to one with a better right, where the property had been erroneously or fraudulently titled in another person's name. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds the title in bad faith. The registered property is deemed to be held in trust for the real owners by the person in whose name it has been registered. In this action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case, the title thereof, which has been wrongfully or erroneously registered in another person's name to its rightful and legal owners.
>
> An action for reconveyance of property based on an implied or constructive trust is the proper remedy of an aggrieved party whose property had been erroneously registered in another's name. The prescriptive period for the reconveyance of registered property is ten years, reckoned from the date of the issuance of the certificate of title. However, the ten-year prescriptive period for an action for reconveyance is not applicable where the complainant is in possession of the land to be reconveyed and the registered owner was never in possession of the disputed property. In such a case, the action for reconveyance filed by the complainant who is in possession of the

disputed property would be in the nature of an action to quiet title which is imprescriptible.[41]

All told, we find no error on the part of the appellate court as to its assailed Decision. All the factual issues raised by the petitioners were already squarely addressed by the said court.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The September 23, 2011 Decision of the Court of Appeals in CA-G.R. CV No. 92001 is hereby **AFFIRMED**. Costs on petitioners.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

[41] *Id*. at 37-39.

FIRST DIVISION

[G.R. No. 207344. November 18, 2020]

OSG SHIPMANAGEMENT MANILA, INC., MICHAELMAR SHIPPING SERVICES, INC., and/or MA. CRISTINA PARAS, *Petitioners, v.* **VICTORIO B. DE JESUS,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; WHILE ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION, THE COURT, IN THE EXERCISE OF ITS DISCRETION, MAY EXAMINE THE RECORDS TO DETERMINE WHETHER THE FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.— [T]he issues the petitioners raised unavoidably assail common factual findings of the labor arbiter, the NLRC, and the CA. As a rule, only questions of law may be raised in a Rule 45 petition. In the case of *Punong Bayan and Araullo (P&A) v. Lepon*, the Court had the opportunity to explain the parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, . . .

In the instant case, the Court holds and so rules that it is necessary to examine the records to determine whether the findings of the Labor Arbiter and the NLRC are supported by substantial evidence.

. . .

All told, this Court concludes that the findings of the LA and the NLRC are supported by substantial evidence.

2. LABOR AND SOCIAL LEGISLATIONS; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; REQUISITES FOR THE COMPENSABILITY OF AN INJURY OR ILLNESS; WORK-RELATED INJURY OR ILLNESS, DEFINED.— [T]wo elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-

related; and second, that the work-related injury or illness must have arisen during the term of the seafarer's employment contract. Accordingly, for disability to be compensable under Section 20(B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness, which are defined as "injur[ies] resulting in disability or death arising out of and in the course of employment" and as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

. . . Section 20(B)[ ] should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and, therefore, compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20(B), the disability causing illness or injury must be one of those listed under Section 32-A, . . .

. . .

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.

3. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; QUANTUM OF PROOF; WHILE THERE IS DISPUTABLE PRESUMPTION OF WORK–RELATEDNESS FOR NON-LISTED OCCUPATIONAL DISEASE, SEAFARERS MUST STILL PROVE BY SUBSTANTIAL EVIDENCE THEIR ILLNESS' WORK-RELATEDNESS.— The list of occupational diseases, however, is not exclusive. Meaning, even those diseases or injuries not enumerated in Section 32-A may still be compensable. In fact, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational disease and the resulting illness or injury which a seafarer may have suffered during the term of his employment contract. The disputable presumption, however, "does not signify

an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness."

4. ID.; ID.; ID.; ID.; ILLNESSES ARE NOT COMPENSABLE WHEN A SEAFARER WAS ABLE TO PERFORM SEA DUTY AND FINISHES THE EMPLOYMENT CONTRACT DESPITE THE ILLNESS.— [T]his Court agrees with respondent that he developed several illnesses while onboard the vessel. . . .

This, notwithstanding, his illnesses are not deemed compensable for they neither rendered him unfit for any sea duty nor disabled him in any way. This is evident in the fact that despite being diagnosed of having kidney stones and urethritis, respondent, as records show, did not seek immediate repatriation. In fact, respondent was able to fulfill his sea duties and finish his employment contract with petitioners. It, thus, seems that his condition is neither severe nor complicated. Moreover, records show that after repatriation, respondent failed to report to petitioners for a post-employment medical examination as prescribed by the rules in cases of repatriation due to a medical condition.

5. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; NOTWITHSTANDING THE DISPUTABLE PRESUMPTION OF AN ILLNESS' WORK–RELATEDNESS, A SEAFARER HAS THE BURDEN TO PROVE COMPLIANCE WITH THE THREE CONDITIONS FOR COMPENSABILITY.— [W]hile there is a disputable presumption that respondent's illnesses, kidney stones and urethritis, which led to the removal of one of his kidneys, were work-related considering that they are not among those enumerated as occupational diseases, he is still required to discharge his own burden of proving compliance with the first three (3) conditions of compensability under Section 32-A of the 2000 POEA-SEC, *i.e.*, that (1) the seafarer's work must involve the risks described herein; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it.

6. ID.; ID.; ID.; ID.; REPATRIATION DUE TO A FINISHED CONTRACT IS AN INDICATION THAT THE ILLNESS

IS NOT WORK-RELATED.— [R]ecords reveal that respondent was repatriated for "finished contract," not for medical reasons. He chose to complete his employment contract with the petitioners instead of being medically repatriated, even as he experienced nausea and body pains on board. In *Villanueva, Sr. v. Baliwag Navigacion, Inc.*, the Court noted with approval the CA conclusion that the fact that the seafarer was repatriated for finished contract and not for medical reasons weakened, if not belied, his claim of illness on board the vessel. Verily, repatriation due to a finished contract is "an indication that the injury or illness is not work-related."

7. ID.; ID.; ID.; ID.; A SEAFARER'S NON-COMPLIANCE WITH THE REQUIREMENT OF POST-EMPLOYMENT MEDICAL EXAMINATION MAY RESULT IN THE FORFEITURE OF THE RIGHT TO CLAIM THE DISABILITY BENEFITS.— Under Section 20-B(3), paragraph 2 of the 2000 POEA SEC, a seafarer who was repatriated for medical reasons must, within three working days from his disembarkation, submit himself to a post-employment medical examination (PEME) to be conducted by the company-designated physician. Failure of the seafarer to comply with this three-day mandatory reporting requirement shall result in the forfeiture of his right to claim the POEA-SEC granted benefits.

The purpose of this three-day mandatory reporting requirement is to allow the employer's doctors a reasonable opportunity to assess the seafarer's medical condition in order to determine whether his illness is work-related or not. . . .

. . .

It has been established that after his repatriation, respondent did not report to petitioners nor to the company-designated physician for a post-employment medical examination. While respondent tried to justify such omission by claiming that petitioners refused to examine him for lack of a master's medical pass, he failed to prove such defense. Respondent did not present any evidence to prove that he tried to submit himself to a company-designated physician within three working days upon his return. Respondent likewise did not present any letter that he was physically incapacitated to see the company-designated physician in order to be exempted from the rule. Worse, it took him months from repatriation to seek medical attention for his

ailments, not from petitioners' company-designated physician, but from a doctor of his choice. In fact, at the time of the filing of the complaint in August 2009, no doctor has declared him unfit to work. Simply put, similar to the *Tagud Case*, respondent did not submit any document to prove that he asserted his rights against the company, or that he immediately took action to seek medical assistance from the company, within three days from his repatriation.

From the foregoing, this Court finds and so rules that respondent's failure to comply with the three-day mandatory reporting requirement proves fatal to his case. Corollary, his right to claim disability benefits, sickness allowance and such other benefits in relation thereto, is deemed forfeited.

8. ID.; ID.; ID.; INORDINATE DELAY IN LODGING A COMPLAINT FOR DISABILITY BENEFITS CASTS A GRAVE SUSPICION ON THE VERACITY OF THE CLAIM AND THE TRUE INTENTIONS OF THE CLAIMANT.— This Court likewise takes notice of the established fact that it took respondent nine long months before lodging a complaint for disability compensation against petitioners. Such inordinate delay in the institution of the complaint casts a grave suspicion and doubt not only as to the veracity of respondent's claims, but also on his true intentions against the petitioners.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Alexander F. Ragonjan for respondent.

D E C I S I O N

GAERLAN, *J.*:

Subject to review under Rule 45 of the Rules of Court at the instance of petitioners OSG Shipmanagement Manila, Inc., Michaelmar Shipping Services, Inc., and/or Ma. Cristina Paras, are the Decision[1] promulgated on January 31, 2013 and the

[1] *Rollo*, pp. 57-68; penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring.

Resolution[2] dated May 28, 2013 in CA-G.R. SP No. 120916, whereby the Court of Appeals (CA) reversed the National Labor Relations Commission's (NLRC) Decision[3] dated March 31, 2011 in NLRC LAC (OFW-M) No. 08-000633-10.

The Antecedents

Victorio B. De Jesus (respondent) alleged that he was hired by petitioner OSG Shipmanagement Manila, Inc. (petitioner), for and in behalf of Michaelmar Shipping Services, its foreign principal on Board M/T OVERSEAS ANDROMAR, as Second Cook on January 15, 2008. His contract period was for eight months on the board the vessel M/T OVERSEAS ANDROMAR.[4] Prior to boarding on February 20, 2008, he underwent medical examination and was declared "Fit to work."[5] Several days after boarding, respondent noticed that the drinking water is salty and dirty. During the voyage, respondent experienced sudden pain all over his body and experienced nausea.[6] Thus, when the ship anchored in Rotterdam, Netherlands, he consulted a doctor who diagnosed him with Costen Syndrome. Despite taking medication, respondent's condition did not improve. Hence, he was sent to a doctor in Singapore and then in China, who diagnosed him of urethritis and kidney stones.[7]

Respondent further averred that when he was repatriated to the Philippines on November 14, 2008, petitioner refused to let him undergo a medical examination due to the absence of a master's medical pass.[8] He was, thus, constrained to seek treatment from his personal doctor. He then underwent Nephrectomy, a surgery to remove one of his kidneys.[9] On August

---

[2] Id. at 129-130.

[3] Id. at 139-144.

[4] Id. at 140.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

26, 2009, a doctor at the Intellicare Makati Clinic certified that respondent is no longer fit for maritime duties.[10] Thus, he filed a complaint for full disability compensation against petitioners.

For their part, petitioners averred that respondent was repatriated due to a finished contract.[11] Upon his arrival, respondent did not report for a post-employment medical examination. They were, thus, surprised when, after nine months from respondent's repatriation, they learned that a complaint for full disability compensation was lodged by respondent before the Labor Arbiter.[12]

Petitioners further contended that respondent's illnesses are not occupational diseases and not work-related; respondent, therefore, is not entitled to disability compensation.[13]

The Labor Arbiter Ruling

Labor Arbiter Lutricia F. Quitevis-Alconcel (Labor Arbiter) rendered the May 7, 2010 Decision[14] dismissing respondent's complaint for lack of merit. The Labor Arbiter ratiocinated that respondent was repatriated not because of any medical condition but due to a finished contract; and respondent failed to prove that his illnesses were work-related. The Labor Arbiter, thus, disposed the case in this wise:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered **DISMISSING** the complaint for lack of merit.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

SO ORDERED.[15]

---

[10] Id.

[11] Id. at 141.

[12] Id. at 134.

[13] Id.

[14] Id. at 131-137.

[15] Id. at 137.

Undaunted, respondent filed an appeal to the NLRC.

The NLRC Ruling

On appeal, the NLRC affirmed the dismissal of the complaint. In its Decision[16] promulgated on March 31, 2011, the NLRC likewise ruled that respondent's repatriation is not due to his alleged medical condition but because of a finished contract. Respondent likewise failed to prove that his illnesses were work-related and that they came about during the term of his employment. The *fallo* of the NLRC decision reads:

WHEREFORE, premises considered, the Appeal is **DENIED** for lack of merit. The Decision of May 7, 2010 is hereby **AFFIRMED**.

SO ORDERED.[17]

Respondent then moved for reconsideration, it was, however, denied. Hence, respondent filed a petition for *certiorari* with the CA.

The CA Ruling

In the assailed Decision[18] promulgated on January 31, 2013, the CA reversed the NLRC's Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed March 31, 2011 decision of public respondent and its June 15, 2011 resolution are **HEREBY REVERSED AND SET ASIDE**. The private respondents are held jointly and severally liable to pay the petitioner permanent and total disability benefits in the amount of US$60,000.00, or its peso equivalent at the prevailing exchange rate at the time of payment, reimbursement of expenses duly supported by official receipts, and attorney's fees of ten percent (10%) of the total monetary award.

SO ORDERED.[19]

---

[16] Id. at 139-144.

[17] Id. at 143.

[18] Id. at 57-67.

[19] Id. at 67.

In reversing the NLRC's Decision, the CA concluded that the ailments of respondent were caused and/or aggravated by the nature of his employment. The CA further explained that, although his illnesses resulting in the removal of his kidney are not among those listed in Section 32-A (Occupational Disease) of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), such ailments are presumed to be work-related. Accordingly, petitioners have the burden of proof to overturn such presumption. Petitioners, however, failed to do so.

Aggrieved, petitioners moved for reconsideration. It was, however, denied in a Resolution[20] dated May 28, 2013.

Hence, the instant petition for review on *certiorari*[21] interposing the following issues:

Issues

I.

Whether the [CA] committed serious, reversible error of law in awarding total and permanent disability benefits to Mr. Victorio de Jesus notwithstanding (i) completion of his employment contract; and (ii) failure to submit himself to the company doctor for a post-medical examination within 3 days from his arrival in the Philippines contrary to the rulings of this Honorable Court in ***Coastal Safeway Marine Services, Inc. v. Esguerra, G.R. No. 185352, 10 August 2011*** and ***Jebsens Maritime, Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Ltd. v. Enrique Undag, G.R. No. 191491, 14 December 2011;***

II.

Whether the [CA] committed serious reversible error of law in awarding total and permanent disability benefits to Mr. Victorio de Jesus notwithstanding overwhelming evidence presented by petitioners that his illness does not render him permanently and totally disabled. Respondent's condition, loss of one kidney is classified as Grade 7 under POEA Contract. x x x

---

[20] Id. at 129-130.

[21] Id. at 3-50.

III.

Whether the [CA] erred in awarding attorney's fees in favor of the private respondent despite justified refusal to pay full and permanent disability benefits based on the fact that private respondent finished his contract.[22]

The Court's Ruling

The petition is meritorious.

Petitioners insist that respondent is not entitled to permanent disability compensation considering that his ailments are not work-related and they did not occur during the term of his employment. They expound that respondent was not repatriated due to a medical condition but because of a finished contract; in fact, after repatriation, he tendered his intent to board another vessel on February 28 or in March of 2009. Petitioners likewise contend that respondent's failure to report for a post-employment medical examination to a company-designated doctor immediately after repatriation is fatal to his claim for disability compensation. Finally, petitioners assert that respondent failed to prove that his ailments had rendered him permanently unfit for sea duty.

Respondent, on the other hand, alleges that his employment on board petitioners' vessel as a Cook exposed him to several factors which caused and aggravated his condition (kidney stones and urethritis); he reported to petitioner upon repatriation for a medical examination and treatment but the company-designated physician refused to attend to his aid for lack of a master's medical pass; his failure to present a master's medical pass upon repatriation was due to the ship captain's non-issuance thereof. Finally, respondent claims that due to his illnesses, one of his kidneys was removed resulting in his permanent unfitness for sea duty.

This Court rules in favor of petitioner.

---

[22] Id. at 9-10.

At the outset, the issues the petitioners raised unavoidably assail common factual findings of the labor arbiter, the NLRC, and the CA. As a rule, only questions of law may be raised in a Rule 45 petition.[23] In the case of *Punong Bayan and Araullo (P&A) v. Lepon*,[24] the Court had the opportunity to explain the parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, *viz.*:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.
>
> Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.
>
> **Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction, may be urged to look into factual issues raised in a Rule 45 petition. For instance, when the petitioner persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court a quo**, as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if

---

[23] *Calaoagan v. People*, G.R. No. 222974, March 20, 2019.

[24] 772 Phil. 311 (2015).

supported by substantial evidence.[25] (Emphasis in the original, citation omitted)

In the instant case, this Court holds and so rules that it is necessary to examine the records to determine whether the findings of the Labor Arbiter and the NLRC are supported by substantial evidence.

Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but also by law and by contract. The material statutory provisions are Articles 197-199 (formerly Articles 191 to 193) under Chapter VI (Disability Benefits), Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment or the POEA-SEC (the governing POEA-SEC at the time the petitioners employed respondent in 2008), and the parties' Collective Bargaining Agreement, bind the relationship between the seaman and his employer.

Section 20 (B), paragraph 6 of the 2000 POEA-SEC reads:

Section 20(B). — COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS. —

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

Pursuant to the afore-quoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the

[25] Id. at 321-322.

work-related injury or illness must have arisen during the term of the seafarer's employment contract.[26] Accordingly, for disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, it must be the result of a work-related injury or a work-related illness, which are defined as "injur[ies] resulting in disability or death arising out of and in the course of employment" and as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[27]

This section, Section 20 (B), should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and, therefore, compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20 (B), the disability causing illness or injury must be one of those listed under Section 32-A, it reads in part:

> Section 32-A. — OCCUPATIONAL DISEASES.
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
> 4. There was no notorious negligence on the part of the seafarer.
>
> x x x x

The list of occupational diseases, however, is not exclusive. Meaning, even those diseases or injuries not enumerated in Section 32-A may still be compensable. In fact, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational disease and the resulting

---

[26] *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*, 678 Phil. 938, 945 (2011).

[27] *Centennial Transmarine, Inc. v. Quiambao*, 763 Phil. 411, 423 (2015).

illness or injury which a seafarer may have suffered during the term of his employment contract. The disputable presumption, however, "does not signify an automatic grant of compensation and/or benefits claim; the seafarer must still prove his entitlement to disability benefits by substantial evidence of his illness' work-relatedness."[28]

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[29]

Under these considerations, this Court holds and so rules that respondent's claim must fail. He failed to substantially satisfy the prescribed requirements to be entitled to disability benefits.

First, this Court agrees with respondent that he developed several illnesses while onboard the vessel. This is supported by the medical certificates from the doctors in Rotterdam, Netherlands and China. To recall, in Rotterdam, he was informed, after medical evaluation, that his condition — body pain and nausea, were triggered by stress. He was then diagnosed with Costen Syndrome. Meanwhile, in China, he was diagnosed with urethritis and kidney stones.

This, notwithstanding, his illnesses are not deemed compensable for they neither rendered him unfit for any sea duty nor disabled him in any way. This is evident in the fact that despite being diagnosed of having kidney stones and

---

[28] *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 387-388 (2014).

[29] Id. at 388-389.

urethritis, respondent, as records show, did not seek immediate repatriation. In fact, respondent was able to fulfill his sea duties and finish his employment contract with petitioners. It, thus, seems that his condition is neither severe nor complicated. Moreover, records show that after repatriation, respondent failed to report to petitioners for a post-employment medical examination as prescribed by the rules in cases of repatriation due to a medical condition.

Even assuming that such ailments disabled respondent and made him unfit for sea duty, respondent failed to prove that they were work-related.

To reiterate, while there is a disputable presumption that respondent's illnesses, kidney stones and urethritis, which led to the removal of one of his kidneys, were work-related considering that they are not among those enumerated as occupational diseases, he is still required to discharge his own burden of proving compliance with the first three (3) conditions of compensability under Section 32-A of the 2000 POEA-SEC, *i.e.*, that (1) the seafarer's work must involve the risks described herein; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it.

In the case at bench, respondent averred that his ailments were caused and aggravated by his exposure to several factors on board the vessel, such as: drinking dirty and salty water, and long exposure to heat in the kitchen where he was working as a cook causing dehydration. This Court disagrees.

While drinking salty and dirty water, and dehydration may indeed cause kidney stones, respondent failed to prove that he and the other crew members were made to drink saline and rusty water. Respondent merely made bare allegations without proof to support his claims. On the other hand, records show that petitioners sufficiently proved that there was adequate water supply, mineral water, onboard the vessel for the consumption

of the whole crew, not only of the officers. Further, if indeed they were made to drink merely desalinated seawater, not mineral water, why was it that of all the crew members of the ship, only him developed kidney stones and urethritis? Likewise, no other crew member complained of the purported unhygienic drinking water. Finally, as a cook, it is part of his tasks to stay for a longer period of time in the kitchen. It is, thus, his duty to himself to see to it that he regularly hydrates with water.

The foregoing leads this Court to conclude that respondent failed to discharge the burden of proof that there is causal connection between the nature of his employment and his illnesses, or that the risk of contracting the illnesses was increased by his working conditions.

As things are, records reveal that respondent was repatriated for "finished contract," not for medical reasons. He chose to complete his employment contract with the petitioners instead of being medically repatriated, even as he experienced nausea and body pains on board. In *Villanueva, Sr. v. Baliwag Navigacion, Inc.*,[30] the Court noted with approval the CA conclusion that the fact that the seafarer was repatriated for finished contract and not for medical reasons weakened, if not belied, his claim of illness on board the vessel.[31] Verily, repatriation due to a finished contract is "an indication that the injury or illness is not work-related."[32]

Even if this Court were to consider that respondent was repatriated for health reasons, his failure to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return militates against his claim for disability benefits.

---

[30] 715 Phil. 299 (2013).

[31] Id. at 302.

[32] *Phil. Transmarine Carriers, Inc. v. Saladas, Jr.*, 796 Phil. 135, 145-146 (2016).

Under Section 20-B (3), paragraph 2[33] of the 2000 POEA-SEC, a seafarer who was repatriated for medical reasons must, within three working days from his disembarkation, submit himself to a post-employment medical examination (PEME) to be conducted by the company-designated physician. Failure of the seafarer to comply with this three-day mandatory reporting requirement shall result in the forfeiture of his right to claim the POEA-SEC granted benefits.

The purpose of this three-day mandatory reporting requirement is to allow the employer's doctors a reasonable opportunity to assess the seafarer's medical condition in order to determine whether his illness is work-related or not. As explained in *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*:[34]

> x x x The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.
>
> To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[35]

Furthermore, time and again, case law has been consistent in stating that such rule is mandatory in nature. In *Manota v. Avantgarde Shipping Corp.*,[36] this Court dismissed the seafarer's

---

[33] For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

[34] Supra note 26.

[35] Id. at 948-949.

[36] 715 Phil. 54 (2013).

complaint due to his failure to comply with the three-day mandatory reporting requirement, *viz.*:

> But assuming *arguendo* that Enrique was repatriated for medical treatment as he claimed, the above-quoted provision clearly provides that **it is mandatory for a seaman to submit himself to a post-employment medical examination within three (3) working days from his arrival in the Philippines before his right to a claim for disability or death benefits can prosper**. The provision, however, admits of exception, i.e., when the seafarer is physically incapacitated to do so, but there must be a written notice to the agency within the same period for the seaman to be considered to have complied with the 3-day rule. **The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease for which the seaman died was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.**
>
> In this case, Enrique admitted that he had his physical examination at the UDMC on January 6, 1997, which was more than a month from his arrival in the Philippines, and his x-ray result showed that he had pneumonia/tuberculosis foci. **Clearly, Enrique failed to comply with the required post-employment medical examination within 3 days from his arrival and there was no showing that he was physically incapacitated to do so to justify his non-compliance. Since the mandatory reporting is a requirement for a disability claim to prosper, Enrique's non-compliance thereto forfeits petitioners' right to claim the benefits as to grant the same would not be fair to respondents.**[37] (Emphasis supplied, citations omitted)

Moreover, in the case of *Tagud v. BSM Crew Service Centre Phils., Inc./Duran*[38] (Tagud Case), the Court denied the seafarer's disability claims for failure to comply with this three-day mandatory reporting requirement despite allegation of the employer's refusal to examine and treat the seafarer upon repatriation, thus:

---

[37] Id. at 64.

[38] 822 Phil. 380 (2017).

It is stated in Section 20 (B)(3) of the 2000 POEA-SEC that a seafarer, upon signing off from the vessel for medical treatment, is required to submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return. The only exception is when the seafarer is physically incapacitated to do so, in which case, the seafarer must give a written notice to the agency within three working days in order to have complied with the requirement. Otherwise, he forfeits his right to claim his sickness allowance and disability benefits.

In *Heirs of the Late Delfin Dela Cruz v. Philippine Transmarine Carriers, Inc.*,[39] we held that the three-day mandatory reporting requirement must be strictly observed since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arose after the employment. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employer would have no protection against unrelated claims. Therefore, it is the company-designated physician who must proclaim that the seafarer suffered a permanent disability, whether total or partial, due to either illness or injury, during the term of the latter's employment.

In the present case, Tagud disembarked in Singapore and was repatriated to Manila on 8 November 2008. He alleged that he reported to his manning agency but was not given any assistance or referred to a company-designated physician. However, Tagud did not present any evidence to prove that he tried to submit himself to a company-designated physician within three working days upon his return. Tagud did not also present any letter that he was physically incapacitated to see the company-designated physician in order to be exempted from the rule. It took him about four months from repatriation or on 9 and 10 March 2009 to seek medical attention for pain in his upper

---

[39] 758 Phil. 382, 394-395 (2015).

right extremities, not from respondents' company-designated physician, but at a private clinic in Caloocan City. No other documents were submitted to prove that he asserted his rights against the company, or that he immediately took action to seek medical assistance from the company, within three days from his repatriation.[40]

For reasons unclear, respondent failed to comply with this three-day mandatory reporting requirement.

It has been established that after his repatriation, respondent did not report to petitioners nor to the company-designated physician for a post-employment medical examination. While respondent tried to justify such omission by claiming that petitioners refused to examine him for lack of a master's medical pass, he failed to prove such defense. Respondent did not present any evidence to prove that he tried to submit himself to a company-designated physician within three working days upon his return. Respondent likewise did not present any letter that he was physically incapacitated to see the company-designated physician in order to be exempted from the rule. Worse, it took him months from repatriation to seek medical attention for his ailments, not from petitioners' company-designated physician, but from a doctor of his choice. In fact, at the time of the filing of the complaint in August 2009, no doctor has declared him unfit to work. Simply put, similar to the *Tagud Case*, respondent did not submit any document to prove that he asserted his rights against the company, or that he immediately took action to seek medical assistance from the company, within three days from his repatriation.

From the foregoing, this Court finds and so rules that respondent's failure to comply with the three-day mandatory reporting requirement proves fatal to his case. Corollary, his right to claim disability benefits, sickness allowance and such other benefits in relation thereto, is deemed forfeited.

This Court likewise takes notice of the established fact that it took respondent nine long months before lodging a complaint

---

[40] *Tagud v. BSM Crew Service Centre Phils., Inc./Duran*, supra note 38 at 891-892.

for disability compensation against petitioners. Such inordinate delay in the institution of the complaint casts a grave suspicion and doubt not only as to the veracity of respondent's claims, but also on his true intentions against the petitioners.

In sum, this Court agrees with the findings and conclusions of the Labor Arbiter and the NLRC. Respondent is not entitled to permanent disability benefits for his failure to (1) undergo a post-employment medical examination within the three-day mandatory reporting period as required under the law, or to show that such failure was due to a valid reason; and (2) establish that his illnesses were work-related. Accordingly, respondent's loss of one kidney, *vis-a-vis* his doctor's certification that he is rendered permanently unfit for sea duty, are rendered irrelevant to the case.

On a final note, while the POEA standard employment contract is designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels, hence, its provisions should be construed and applied fairly, reasonably, and liberally in favor or for the benefit of the seafarer and his dependents,[41] it is likewise true that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[42] The burden to prove entitlement to disability benefits, therefore, lies on respondent. Unfortunately, he failed to discharge such burden.

All told, this Court concludes that the findings of the LA and the NLRC are supported by substantial evidence. The CA, therefore, committed reversible error when it awarded respondent disability benefits. Clearly, respondent's claim for disability compensation lacks legal and factual bases. The dismissal of the complaint for disability compensation against petitioners is, thus, warranted.

---

[41] *C.F. Sharp Crew Management, Inc. v. Legal Heirs of Godofredo Repiso*, 780 Phil. 645, 688 (2016).

[42] *InterOrient Maritime Enterprises, Inc. v. Creer III*, 743 Phil. 164, 183 (2014).

WHEREFORE, in view of the foregoing premises, the instant petition is **GRANTED**. The January 31, 2013 Decision and the May 28, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120916, are **SET ASIDE**.

The May 7, 2010 Decision of the Labor Arbiter and March 31, 2011 Decision of the National Labor Relations Commission, both dismissing the complaint for lack of merit, are **REINSTATED**.

SO ORDERED.

Peralta, C.J., Caguioa and *Zalameda, JJ.*, concur.

Carandang, J., on official leave.

THIRD DIVISION

[G.R. No. 207429. November 18, 2020]

MANILA ELECTRIC COMPANY (MERALCO), *Petitioner, v.* **AAA CRYOGENICS PHILIPPINES, INC.,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT'S JURISDICTION IN A RULE 45 PETITION IS LIMITED TO THE REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.— A cursory reading of the Petition reveals that it primarily raises a question of fact, which is inappropriate in a Rule 45 petition. The Court's jurisdiction in a Rule 45 petition is limited to the review of questions of law because the Court is not a trier of facts.The rule however admits of exceptions:

> (1) **[W]hen the findings are grounded entirely on speculations, surmises, or conjectures**; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT; THE TRIAL COURTS' FACTUAL FINDINGS, ESPECIALLY ON THE CREDIBILITY OF WITNESSES, ARE ACCORDED

GREAT WEIGHT AND RESPECT.— [T]he Court has always accorded great weight and respect to the factual findings of trial courts, especially in their assessment of the credibility of witnesses. Their findings are even binding when affirmed by the CA. We do not find any reason to deviate from this doctrine specifically on the issue of the occurrence of the power fluctuations and interruptions.

3. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES; TO WARRANT AN AWARD OF ACTUAL DAMAGES, THE CLAIMANT MUST PROVE THE ACTUAL AMOUNT OF LOSS WITH A REASONABLE DEGREE OF CERTAINTY PREMISED UPON A COMPETENT PROOF AND ON THE BEST EVIDENCE OBTAINABLE.—** Under Article 2199 of the Civil Code, "[e]xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by [them] as [they have] duly proved." Jurisprudence instructs that "[t]he claimant must prove the actual amount of loss with **a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable**."

4. **ID.; ID.; EXEMPLARY DAMAGES; WANTON DISREGARD OF CONTRACTUAL OBLIGATION WARRANTS AN AWARD OF EXEMPLARY DAMAGES.—** As to the grant of exemplary damages, We find that the same was properly awarded by the CA. The records show that despite Meralco's repeated assurance of better electric supply, and despite knowledge of the serious production losses experienced by AAA due to the power fluctuations and interruptions, it still failed to provide any remedy, in wanton disregard of its contractual obligation to deliver energy "at reasonably constant potential and frequency."As a public utility vested with vital public interest, Meralco should be reminded of its "obligation to discharge its functions with utmost care and diligence."

5. **ID.; ID.; ATTORNEY'S FEES; FOR ATTORNEY'S FEES TO BE AWARDED, THERE MUST BE COMPELLING LEGAL REASON TO BRING THE CASE WITHIN THE EXCEPTIONS PROVIDED UNDER ARTICLE 2208 OF THE CIVIL CODE.—** [A]s to the CA's deletion of attorney's fees, We see no reason to disturb the same. Jurisprudence instructs that "the award of attorney's fees is an exception rather than the general rule; thus, there must be **compelling legal**

reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award."We simply find no compelling legal reason here.

6. ID.; ID.; TEMPERATE DAMAGES; INTEREST THEREON; IN THE ABSENCE OF PROOF OF THE AMOUNT OF ACTUAL DAMAGES SUFFERED, TEMPERATE DAMAGES MAY BE AWARDED WITH INTEREST THEREON.— [F]or AAA's failure to establish with reasonable certainty the amount of actual damages it suffered, no actual damages can be awarded. Instead, AAA is entitled to ₱15,819,570.00 as temperate damages. This award shall bear interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until fully paid pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

Meralco Legal Services Department for petitioner.
Virgilio C. Mangera & Associates for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the July 23, 2012 Decision[2] and May 29, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 89307 which affirmed with modifications the July 6, 2005 Joint Decision[4] of the Regional Trial Court (RTC), Branch 164 of Pasig City in Civil Case No. 66768, an action for injunction and damages by AAA Cryogenics Philippines, Inc. (AAA), and Civil Case No. 67951, a complaint

---

[1] *Rollo*, pp. 12-34.

[2] Id. at 37-48; penned by Associate Justice Ricardo R. Rosario (now a member of this Court) and concurred in by Associate Justices Jane Aurora C. Lantion and Leoncia Real-Dimagiba.

[3] Id. at 50-51.

[4] CA *rollo*, pp. 91-113; penned by Judge Librado S. Correa.

for collection of sum of money by Manila Electric Company (Meralco).

The Antecedents:

The facts, as summarized by the CA, are as follows:

AAA was engaged in the production of liquid forms of gasses, such as liquid oxygen, liquid nitrogen and liquid argon. In the production of these products, the plant facilities of AAA relied on computers and electronic processors that required a very stable source of power, otherwise the whole plant would shut down and freeze up. Every time the plant shut[s] down due to power fluctuation, the purity of the liquid gasses went down, and the plant had to stop production for at least four hours in order to regain the required purity of the gasses. Further, if the plant froze up, it had to be dried out for at least 72 hours without production, and then cooled down again for at least 16 hours before production could resume. A stable source of power was, thus, crucial to AAA's operations.

Between October 1997 and April 1998, AAA's Plant Supervisor reported fluctuations and interruptions in the electrical power supplied by Meralco on the following dates:

Fluctuations	Interruptions
10, 14 & 17 October 1997	11 October 1997
1, 5, 14, 18 & 28 November 1997	13, 14 & 28 November 1997
8 & 12 December 1997	6 & 25 February 1998
9, 12, 23, 24 & 26 February 1998	12, 14, 18 & 23 March 1998
7, 10, 16, 21, 23, 26 & 28 March 1998	
5 April 1998	

As a result of these power fluctuations and interruptions, AAA suffered losses in the amount of P21,092,760.00.

AAA sent several letters informing Meralco of its problems with respect to the supply of power, but Meralco could not remedy the situation, except to advise AAA to install power conditioning equipment in the form of a motor generator set in order to level out the supply of power.

In the meantime, AAA stopped paying its electrical bills until its total accountabilities reached P13,657,141.56. Meralco, thus,

disconnected and terminated its service contract with AAA. After deducting AAA's service and meter deposit and applying interest charges, Meralco computed AAA's unpaid bills to amount to ₱10,453,477.55.

On 23 April 1998, AAA filed an action for Injunction and Damages against Meralco seeking to collect the amount of ₱21,092,760.00 representing its losses due to power fluctuations and interruptions, among other damages. The case was docketed as Civil Case No. 66768.

On the other hand, on 16 June 2000, Meralco filed an action against AAA for Collection of Sum of Money to collect the sum of ₱13,657,141.56 representing the latter's unpaid electric bill. This case was docketed as Civil Case No. 67951. The two cases were consolidated on 9 August 2001 since they arose from a single contract and the same set of facts.[5] (Citations omitted)

During trial, AAA presented the Log Sheet Readings of its computers, which contained the exact time and date when the purity of gases fell below the required purity.[6] According to AAA's plant supervisor Raul D. Cruz, Jr. (Cruz), the fall in the purity of gases indicated the presence of power fluctuations and interruptions.[7] Further, to prove the amount of actual damages it suffered, AAA submitted two documents: (1) Summary of Production Losses due to Fluctuation;[8] and (2) Comparative Presentation of Production under Normal Power Supply, Production when there is Power Fluctuation and Quantity in Cubic Meters of Productive Losses due to Power Fluctuation.[9]

To rebut AAA's claim of power fluctuations and interruptions, Meralco presented two Daily Interruption Reports prepared by its personnel, which showed that there were only two power interruptions which occurred during the period in question, as

---

[5] *Rollo*, pp. 38-40.

[6] Exhibits "P-11 to P-45", Folder of Exhibits, pp. 88-257.

[7] TSN, September 12, 2000, pp. 15-16.

[8] Exhibit "L", Folder of Exhibits, p. 38.

[9] Exhibit "Q", Folder of Exhibits, p. 76.

recorded by its computers.[10] Meralco likewise presented expert witnesses who stressed that power interruptions and fluctuations are normal due to the inherent nature of electricity, and thus unavoidable.[11]

Ruling of the Regional Trial Court:

In its July 6, 2005 Joint Decision,[12] the RTC found Meralco liable for actual damages arising from its failure to deliver constant energy supply to AAA, in breach of its contractual obligation to deliver energy "at reasonably constant potential and frequency" under the Agreement for the Sale of Electric Energy.[13] The trial court relied on the Log Sheet Readings of AAA's computers as well as the testimony of Cruz that the purity of gases fell during power fluctuations and interruptions.[14] The RTC likewise relied on Meralco's expert witness Mamerto Cañita (Cañita), who affirmed the capability of AAA's computers to accurately record the power fluctuations and interruptions.[15] On the other hand, the RTC found that Meralco failed to provide any concrete explanation as to the root cause of the power fluctuations and interruptions.[16] Its expert witnesses merely attributed the same to the inherent nature of electricity.[17] Thus, the trial court found Meralco liable for the amount of ₱21,092,760.00 representing the production losses suffered by AAA, as shown in the latter's documentary evidence.[18] The

---

[10] Records, Vol. II, pp. 495-505. Meralco likewise claimed that only one power fluctuation occurred, but during trial, their witness Edwin Crispino admitted that Meralco does not have a monitor for power fluctuations (TSN, January 16, 2004, pp. 10-11).

[11] TSN, September 29, 2001, pp. 7-9; April 19, 2002, pp. 2-4; October 12, 2002, p. 7.

[12] CA *rollo*, pp. 40-62.

[13] Id. at 54-59.

[14] Id. at 42-44, 54-56.

[15] Id. at 55.

[16] Id. at 57.

[17] Id.

[18] Id. at 59, 61-62.

RTC likewise held Meralco liable for exemplary damages amounting to ₱300,000.00 and attorney's fees amounting to ₱200,000.00.[19]

As to Meralco's collection claim against AAA, the RTC held AAA liable for its unpaid electricity bills amounting to ₱10,453,477.55, as well as attorney's fees amounting to 20% of the unpaid bills. The RTC further ordered the parties' respective liabilities to be offset.

The dispositive portion of the RTC's Joint Decision reads:

WHEREFORE:

1. In Civil Case No. 66768, the court finds for the plaintiff AAA and hereby orders defendant Meralco to pay:

a) ₱21,092,760.00 — as actual damages;
b) ₱300,000.00 — as exemplary damages;
c) ₱200,000.00 — as and for attorney's fees; and
d) the cost of suit.

2. Civil Case No. 67951, the court finds for the plaintiff Meralco and hereby orders defendant AAA to pay:

a) ₱10,453,477.55 — as actual damages with legal interest of six (6%) per cent per annum computed from the filing of this case;
b) 20% of the aforesaid amount — as attorney's fees; and
c) the costs.

In addition, AAA may set off the amount demanded by Meralco in payment of its unpaid bills for the period of January to July 1999, in accordance with the law.

SO ORDERED.[20]

Both parties appealed to the CA, with AAA insisting that it should not be held liable for its unpaid electricity bills, and with Meralco maintaining that aside from the two power interruptions recorded by its computers, the remaining ones reported by AAA did not occur.

---

[19] Id. at 61-62.

[20] Id. at 112-113.

Ruling of the Court of Appeals:

In its assailed Decision, the CA affirmed the RTC's July 6, 2005 Joint Decision with modification in that the award of attorney's fees to both parties was deleted for having no factual or legal basis.[21]

As to AAA's appeal, the CA rejected AAA's argument that it should not pay for the electricity delivered by Meralco supposedly since it did not benefit from it, considering that it never raised such defense before the trial court.[22] The appellate court held that in any case, Meralco never guaranteed the economic benefit of the electricity it supplied.[23]

As to Meralco's appeal, the CA affirmed the RTC's finding as to the occurrence of the power fluctuations and interruptions in the electricity supplied by Meralco, given that AAA's plant was highly automated and purely computerized.[24] Similar with the RTC, the CA relied on Cañita's statement that AAA's computers recorded power fluctuations and interruptions accurately.[25] Such admission, according to the appellate court, shifted the burden on Meralco to disprove that such power fluctuations and interruptions occurred.[26] Unfortunately for the utility company, it was unable to discharge such burden. The CA further held that in any case, given Meralco's January 28, 1998 letter enumerating the steps it intended to take to "minimize if not eliminate power trippings," it practically admitted that such power trippings or interruptions occurred.[27] As a result of such power fluctuations and interruptions, the CA held that

---

[21] *Rollo*, p. 47.

[22] Id. at 43.

[23] Id. at 44.

[24] Id. at 45.

[25] Id.

[26] Id.

[27] Id. at 45-46.

AAA suffered actual damages as shown in its documentary evidence.[28]

The CA further affirmed the RTC's grant of exemplary damages as Meralco repeatedly failed to address AAA's concerns.[29] It likewise considered that Meralco is a public utility company "tasked to undertake extraordinary diligence in the exercise of its responsibilities to render good service to the public."[30]

The dispositive portion of the assailed Decision of the appellate court reads:

> ***WHEREFORE***, the *Joint Decision*, dated 6 July 2005 of the Regional Trial Court, Branch 164, Pasig City is **AFFIRMED with MODIFICATION** in that the award of attorney's fees to both AAA Cryogenics Philippines, Inc. and Manila Electric Company is **DELETED**.
>
> ***SO ORDERED.***[31]

Meralco moved for a partial reconsideration, which was however denied for lack of merit by the CA in its assailed Resolution.[32] AAA no longer moved for the reconsideration of the assailed Decision.

The Petition:

Meralco raises the following questions in its Petition:

> [1] Whether actual damages may be awarded in the absence of adequate proof of pecuniary loss[;]
>
> [2] Whether exemplary damages may be awarded in the absence of proof that defendant acted in a wanton, fraudulent, reckless, oppressive and malevolent manner; and

---

[28] Id. at 46.

[29] Id.

[30] Id.

[31] Id. at 47.

[32] Id. at 50-51.

[3] Whether attorney's fees may still be deleted even if it is adequately shown that claimant was compelled to litigate with third persons or incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought.[33]

As to the first question, Meralco argues that AAA failed to prove the occurrence of the power fluctuations and interruptions, and that the same were caused by Meralco.[34] According to the energy firm, the Log Sheet Readings which served as basis of the RTC's finding that there were power interruptions and fluctuation, do not prove the occurrence of the same since the readings merely pertained to the purity of AAA's gas products, not recordings of power fluctuations or interruptions.[35] As to Cañita's supposed admission of the accuracy of AAA's computers, Meralco claimed that Cañita's answer was merely a general answer to the question of whether computers can accurately record power fluctuations and interruptions, without specific reference to AAA's computers.[36] Further, according to Meralco, unlike AAA which was unable to prove the capability of its computers to record power fluctuations and interruptions, Meralco's highly specialized computer, the Supervisory Control And Data Acquisition (SCADA) monitor, can specifically record power fluctuations and interruptions.[37] And, according to the SCADA monitor, there were only two interruptions during the period in question, both of which were caused by an "act of God and/or breakdown or damage to the machinery or distribution of the Company," and for which Meralco should not be held liable for.[38] Meralco posits that in any case, there was no sufficient evidence that AAA suffered actual damages since the documents

---

[33] Id. at 19.

[34] Id. at 20-21.

[35] Id. at 21-23.

[36] Id. at 24.

[37] Id. at 25.

[38] Id. at 26-27.

submitted by AAA to prove its alleged production losses were a product of mere estimation.[39]

Moreover, Meralco contends that there was no evidence of fraud, bad faith, or wanton disregard of its contractual obligations to warrant the RTC's award of exemplary damages.[40] In addition, Meralco argues that it is entitled to attorney's fees in view of AAA's unjustified refusal to pay its bills.[41]

In its Comment,[42] AAA points out that the Petition did not raise "special and important reasons" for its allowance.[43] Further, it raised only questions of facts which are not proper in a Rule 45 petition.[44] As to the power fluctuations and interruptions, AAA argues that its occurrence was adequately supported by evidence, as reflected in the RTC's July 6, 2005 Joint Decision, and which finding was significantly affirmed by the CA.[45] As to the award of exemplary damages, AAA avers that it was proper considering Meralco's wanton disregard of its responsibilities.[46] As to the attorney's fees, AAA maintains that its deletion was likewise proper since its failure to pay its electricity bills was caused by the liquidity problems it experienced due to the power fluctuations and interruptions.[47]

In its Reply,[48] Meralco argues that the Court may resolve questions of fact raised in a Rule 45 petition under the exceptions to the general rule, which exceptions were supposedly present

---

[39] Id. at 28.

[40] Id. at 29-30.

[41] Id. at 30-31.

[42] Id. at 105-116.

[43] Id. at 105.

[44] Id. at 109-110, 112.

[45] Id. at 110-111.

[46] Id. at 113.

[47] Id. at 114.

[48] Id. at 124-144.

in the instant case.[49] Thus, it insists that apart from the two power interruptions it recorded, the remaining power fluctuations and interruptions claimed by AAA never occurred.[50] Further, it emphasized that no other Meralco customer in the area had come forward and claimed liability against Meralco.[51]

Issues

The issues in this case are (1) whether the power fluctuations and interruptions occurred and were caused by Meralco; (2) whether Meralco is liable for exemplary damages; and (3) whether Meralco is entitled to attorney's fees.

Our Ruling

The Petition is partly meritorious.

The Petition raises a question of fact.

A cursory reading of the Petition reveals that it primarily raises a question of fact, which is inappropriate in a Rule 45 petition. The Court's jurisdiction in a Rule 45 petition is limited to the review of questions of law[52] because the Court is not a trier of facts.[53] The rule however admits of exceptions:

(1) **[W]hen the findings are grounded entirely on speculations, surmises, or conjectures**; (2) when the inference made is manifestly

---

[49] Id. at 124-125.

[50] Id. at 125-132.

[51] Id. at 138.

[52] RULES OF COURT, Rule 45, Sec. 1. It reads:

> SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise **only questions of law** which must be distinctly set forth. (Emphasis supplied)

[53] *General Mariano Alvarez Services Cooperative, Inc. v. National Housing Authority*, 753 Phil. 353, 359 (2015).

mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[54] (Emphasis supplied)

We find that the circumstances in the instant case warrant the application of the exception rather than the general rule, as will be hereinafter discussed.

The occurrence of the power fluctuations and interruptions is well-supported by evidence.

An assiduous review of the records shows that the RTC's finding of the occurrence of the power fluctuations and interruptions is well-supported by evidence. Such finding is based on the testimony of Cruz, who explained in detail AAA's production processes, and how the purity of gases falls short of the required level of purity in cases of power fluctuations and interruptions in Meralco's supply of electricity.[55] Such fall in the unsullied state of gases is shown in the computer printouts of the Log Sheet Readings, which accurately record the exact date and time when such fall occurs. Thus, while Meralco is correct that the Log Sheet Readings pertain to the purity of gases, and not to the power fluctuations and interruptions *per se*, it is wrong to conclude that the RTC's finding of its occurrence has no basis. On the contrary, We find that such finding is adequately supported not only by the testimony of Cruz, but also by Meralco's conduct itself.

---

[54] *Laborte v. Pagsanjan Tourism Consumers' Cooperative*, 724 Phil. 434 (2014), citing *Vitarich Corporation v. Losin*, 649 Phil. 164-181 (2010).

[55] *See* TSN, September 12, 2000, pp. 6-28.

First, in its November 19, 1997 letter to AAA's complaint of power fluctuations and interruptions, Meralco responded by enumerating the measures that AAA should undertake to "minimize the transient interruptions," including making "recommendations to minimize interruption."[56] It even assured AAA of a "better power supply" once a new substation is installed near AAA's plant.[57] *Second*, in its January 28, 1998 letter, Meralco reiterated its "steps to minimize if not eliminate power trippings of circuit," including conducting a "continuous line rehabilitation program," among others.[58] *Third*, in the testimonies of Meralco's expert witnesses, they consistently emphasized that power fluctuations and interruptions are normal due to the inherent nature of energy.[59] Taken altogether, these pieces of evidence persuade Us to believe that indeed, the power fluctuations and interruptions occurred, and that the same were caused by the energy provider, Meralco.

Further, while it may be true that no other Meralco customer had come forward with a similar complaint, it cannot be denied that during that time, news of widespread power fluctuations and interruptions was published in the Manila Bulletin on September 14, 1997, with headline "*Laguna firms hit power fluctuations.*"[60] The report stated that about 30 firms in Calamba, Laguna, where AAA's plant was located, have experienced "frequent brownouts or fluctuating power voltage of the Manila Electric Co. (MERALCO) which they claimed had resulted to big losses involving millions of pesos in their operations."[61] The report further stated that "[o]fficials of the Manila Electric Co. have been reported to have said that the company's problem

---

[56] Exhibit "B", Folder of Exhibits, p. 21.

[57] Id.

[58] Exhibit "I", Folder of Exhibits, p. 35.

[59] TSN, September 29, 2001, pp. 7-9; April 19, 2002, pp. 2-4; October 12, 2002, p. 7.

[60] Exhibit "N", Folder of Exhibits, p. 41.

[61] Id.

is that it [was] still using old transmission lines which are not capable of transmitting the required heavy voltage in the area x x x."[62]

Even with the foregoing evidence, however, Meralco still insists in its Petition that aside from the two power interruptions it recorded, the remaining ones reported by AAA never occurred based on the data recorded by the SCADA monitor. However, it is not lost on Us that Meralco never presented any data or document coming directly from the SCADA monitor. Meralco merely presented the Daily Interruption Reports prepared by its personnel, which they claimed to be based on the data from the SCADA monitor. If indeed the SCADA monitor did not record any power fluctuations or interruptions, Meralco could have easily presented such data coming directly from the SCADA, much like what AAA did through its computers. That way, it could have disproved each and every power fluctuation and interruption recorded by AAA's computers. Instead, Meralco chose to present only the two Daily Interruption Reports, which notably reflected the same power interruptions recorded by AAA's computers on November 13, 1997 and November 18, 1997.

As to Cañita's supposed admission of the accuracy of AAA's computers to record power fluctuations and interruptions, We agree with Meralco that he was referring to computers in general. This is readily observable from his testimony:

Q: Residential houses require only 220 volts. Now, before you testified before this Honorable Court, did you try to examine the exhibits presented by the plaintiff here, Computer Print-outs indicating fluctuations and interruptions?
A: No, sir.

Q: **You must know as a computer literate that computers record accurately fluctuations and interruptions?**
A: **Yes, sir.**[63] (Emphasis supplied)

---

[62] Id.

[63] TSN, November 22, 2002, p. 12.

Nevertheless, this does not detract from all the evidence supporting the occurrence of the power fluctuations and interruptions in Meralco's supply of energy.

At this point, We stress that the Court has always accorded great weight and respect to the factual findings of trial courts, especially in their assessment of the credibility of witnesses.[64] Their findings are even binding when affirmed by the CA.[65] We do not find any reason to deviate from this doctrine specifically on the issue of the occurrence of the power fluctuations and interruptions.

AAA was unable to prove with reasonable degree of certainty the amount of actual damages it suffered.

Despite the occurrence of the power fluctuations and interruptions in the electricity delivered by Meralco, however, We find that AAA was unable to prove with a reasonable degree of certainty the amount of actual damages it suffered.

Under Article 2199 of the Civil Code, "[e]xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by [them] as [they have] duly proved." Jurisprudence instructs that "[t]he claimant must prove the actual amount of loss with a **reasonable degree of certainty premised upon competent proof and on the best evidence obtainable**."[66]

Here, to establish the amount of actual damages it suffered, AAA offered in evidence two documents: (1) Summary of Production Losses due to Fluctuation; and (2) Comparative

---

[64] *Rapio v. Court of Appeals*, G.R. No. 238096, June 25, 2018, citing *People v. Delen*, 733 Phil. 321-338 (2014).

[65] Id.

[66] *Snow Mountain Dairy Corp. v. GMA Veterans Force, Inc.*, 747 Phil. 417-427 (2014), citing *Filipinas Synthetic Fiber Corp. v. De los Santos*, 661 Phil. 99-114 (2011). Emphasis supplied.

Presentation of Production under Normal Power Supply, Production when there is Power Fluctuation and Quantity in Cubic Meters of Productive Losses due to Power Fluctuation. **However, the basis and source of these documents were never presented in court, and neither were they testified to by any witness of AAA.** While the first document contains information on the quantity of unproduced gases by AAA, as well as their selling price, **there is no indication as to where these figures were based or how they were derived. There is likewise no receipt nor any supporting document offered in court to support such figures.** The same is true for the second document, which lacks information as to the source or basis of the figures under "Production under Normal Power Supply." Without these information, the resulting figures may very well be a product of speculation or sheer estimation. We therefore cannot allow AAA to recover the amount of ₱21,092,760.00 without running afoul of the well-established doctrine that the amount of actual damages must be proved with a reasonable degree of certainty.

Nevertheless, Meralco cannot escape liability for this sole reason. Under Article 2224 of the Civil Code, "[t]emperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty." In *Universal International Investment (BVI) Limited v. Ray Burton Development Corporation*,[67] We summarized the parameters in determining the amount of temperate damages:

> The calculation of temperate damages is usually left to the sound discretion of the courts. We observe the limit that in giving recompense, the amount must be reasonable, bearing in mind that the same should be more than nominal, but less than compensatory. In jurisprudence, this Court has pegged temperate damages to an amount equivalent to a certain percentage of the actual damages claimed by the injured party.[68] (Citations omitted)

---

[67] 799 Phil. 420 (2016).

[68] Id. at 444.

Given the foregoing circumstances, We find three-fourths of AAA's claim, or ₱15,819,570.00, to be in order.

Additionally, it should be pointed out that Meralco's argument that it should not be held liable for the power interruptions on November 13, 1997 and November 28, 1997, as well as the power fluctuation on November 18, 1997, lacks merit. This is because Meralco failed to provide any concrete proof of the cause of the power interruptions and fluctuation.[69]

The award of exemplary damages and the deletion of attorney's fees have factual and legal basis.

As to the grant of exemplary damages, We find that the same was properly awarded by the CA. The records show that despite Meralco's repeated assurance of better electric supply, and despite knowledge of the serious production losses experienced by AAA due to the power fluctuations and interruptions, it still failed to provide any remedy, in wanton disregard of its contractual obligation to deliver energy "at reasonably constant potential and frequency."[70] As a public utility vested with vital public interest, Meralco should be reminded of its "obligation to discharge its functions with utmost care and diligence."[71]

Finally, as to the CA's deletion of attorney's fees, We see no reason to disturb the same. Jurisprudence instructs that "the award of attorney's fees is an exception rather than the general rule; thus, there must be **compelling legal reason** to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award."[72] We simply find no compelling legal reason here.

---

[69] *See* TSN, January 14, 2002, p. 2; October 25, 2002, p. 6; November 22, 2002, p. 16; January 16, 2004, pp. 9-11.

[70] *See* Exhibit "R", Folder of Exhibits, p. 77.

[71] *Ridjo Tape & Chemical Corp. v. Court of Appeals*, 350 Phil. 184, 194 (1998).

[72] *Philippine National Construction Corp. v. APAC Marketing Corp.*, 710 Phil. 389 (2013), citing *Espino v. Spouses Bulut*, 664 Phil. 702 (2011). Emphasis supplied.

All told, We find Meralco liable for the power fluctuations and interruptions experienced by AAA. Nevertheless, for AAA's failure to establish with reasonable certainty the amount of actual damages it suffered, no actual damages can be awarded. Instead, AAA is entitled to ₱15,819,570.00 as temperate damages. This award shall bear interest at the rate of six percent (6%) per *annum* from date of finality of this Decision until fully paid pursuant to prevailing jurisprudence.

WHEREFORE, the assailed Decision is hereby **AFFIRMED with MODIFICATION** in that the award of actual damages amounting to ₱21,092,760.00 is **DELETED**. In lieu thereof, and in addition to the Court of Appeals' award of exemplary damages amounting to ₱300,000.00, Manila Electric Company is further **ORDERED** to **PAY** AAA Cryogenics Philippines, Inc. temperate damages amounting to ₱15,819,570.00. All monetary awards shall earn interest at the legal rate of six percent (6%) per *annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe,[*] *S.A.J., Leonen* (*Chairperson*), *Inting,* and *Delos Santos, JJ.,* concur.

[*] Designated as additional member per raffle dated November 11, 2020 vice *J.* Rosario who penned the assailed Decision of the Court of Appeals.

THIRD DIVISION

[G.R. No. 207856. November 18, 2020]

PHILIPPINE NATIONAL BANK, *Petitioner*, *v.* **LORENZO T. BAL, JR.,** *Respondent*.

SYLLABUS

1. MERCANTILE LAW; BANKS; NEGOTIABLE INSTRUMENTS; CHECKS; UNCOLLECTED CHECK DEPOSITS MAY BE HONORED BY A BANK, THROUGH ITS BRANCH MANAGER, AT ITS DISCRETION.— The findings of the trial court are apt on this point when it held that "[a]t the time Bal was called upon to approve the encashment of the dishonored checks, he made a judgment call based on his appraisal of Tan's banking history with PNB and the regularity of the checks presented on payment."We hold that Bal's questioned acts were therefore made within his discretion as branch manager. *Tan v. People*,We held that as to the uncollected check deposits, the bank may honor the check at *its discretion* in favor of clients. Bal's position as branch head entails the exercise of such discretion.

2. ID.; ID.; CIVIL LAW; OBLIGATIONS; SOLIDARY LIABILITY; BRANCH MANAGERS WHOSE QUESTIONED ACTS WERE MADE WITHIN THEIR DISCRETION MAY NOT BE SOLIDARILY LIABLE WITH THE ONE WHO BENEFITED FROM THE DRAWINGS AGAINST UNCOLLECTED CHECK DEPOSITS.— Bal has not incurred any personal liability on the drawings against the uncollected bank deposits in question.

. . .

. . . [T]he trial court correctly interpreted the PNB's Administrative Adjudication Panel's pronouncement that its disposition finding Bal guilty of serious misconduct - "without prejudice to the filing of the appropriate action in court to protect the interests of the bank, including the recovery of the amounts involved" referred only to the recovery of the amount involved from the one who actually benefited from the fraud, that is,

> Tan. It is therefore Tan who must be pursued by PNB fur the amount that it claims to have lost. In fact, PNB itself asserts that Tan had expressly acknowledged owing ₱520,000.00 to the bank and had in fact issued a couple of promissory notes to PNB as to such obligation.
>
> In any case, since Bal was already penalized by PNB for his violations by way of a four-month long suspension, making him personally accountable for the liability that Tan had already acknowledged to be his would be tantamount penalizing him twice for the same offense.
>
> . . . Bal may not be held personally or solidarily liable. Settled is the rule that solidarity is never presumed. There is solidary liability when the obligation so states, or when the law or the nature of the obligation requires the same, which are unavailing in the instant case.

APPEARANCES OF COUNSEL

Ismael C. Billena, Jr. & Jubert Jay C. Andrion for petitioner.
Pedro R. Lazo for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition for Review[1] is the November 19, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 93687 which denied the appeal of Philippine National Bank (PNB). Also assailed is the June 18, 2013 Resolution[3] of the appellate court which denied the motion for reconsideration of PNB.

---

[1] *Rollo*, pp. 27-49.

[2] Id. at 16-22; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[3] Id. at 24-25.

PNB is engaged in the banking business. Lorenzo T. Bal, Jr. was then the manager of PNB's Caloocan Branch (Branch) at the time the incident subject of the instant case occurred. The Branch had a depositor by the name of Adriano S. Tan (Tan), who maintained thereat Current Account No. 215-811497-9 in his name.[4]

The Antecedents

On October 12, 2000, PNB filed a complaint for sum of money against Tan and herein respondent Bal. PNB claimed that Bal approved various cash withdrawals by Tan against several checks without waiting for them to be cleared. When these checks were dishonored, PNB claimed that Bal allowed Tan to deposit several checks to partially cover Tan's various cash withdrawals. Nevertheless, these new checks were also dishonored for insufficient funds.[5]

PNB further asserted that Tan had already acknowledged his outstanding obligation to the bank in the amount of ₱520,000.00 and executed a promissory note[6] in its favor. To confirm this acknowledgement, Tan issued another promissory note in favor of PNB in the same amount. Despite demand, however, Tan failed to pay PNB the stipulated amount.[7]

PNB alleged that Bal violated the bank's policy on the prohibition against drawing on uncollected deposits pursuant to its General Circular No. 11-58/80 dated March 14, 1980. In addition, PNB claimed that Bal violated and exceeded his limited authority to approve encashment of other bank checks under its Manual of Signing Authority. In view of the foregoing violations, PNB averred that it incurred losses in the amount of ₱520,000.00 and that Bal is personally liable to the bank

---

[4] *Id*. at 30.

[5] *Id*. at 17.

[6] *Id*. at 135-136.

[7] *Id*. at 17-18.

pursuant to its Manual of Policies on Cash, Checks and Other Cash Items and Deposits.[8]

PNB prayed that Tan and Bal be held jointly and severally liable to the bank in the amount of ₱520,000.00, plus interest and damages.[9]

On the other hand, Bal argued that the trial court had no jurisdiction over the complaint against him because it amounted to an administrative action. He further pointed out that he was already administratively penalized by the Administrative Adjudication Panel of the bank for his alleged violations with a four-month suspension. He likewise asserted that PNB had no valid cause of action against him because he neither made any acknowledgement of the obligation nor participated in the business transactions that led to the obligation. Thus, he argued that Tan should be held solely liable to the bank for the amount of ₱520,000.00.[10]

Ruling of the Regional Trial Court (RTC):

In its December 10, 2008 Decision,[11] the RTC dismissed the complaint against Bal but held Tan solely liable for the entire amount of ₱520,000.00.[12] The dispositive portion of the RTC's Decision reads:

WHEREFORE, PREMISES CONSIDERED, this Court finds:

1. That plaintiff Philippine National Bank failed to prove through a preponderance of evidence Lorenzo T. Bal's civil liability on any monetary liability; and that the cause of action for a collection of a sum of money filed against him is hereby **DISMISSED** for insufficiency of evidence;

2. That having been declared in default, and not having controverted the preponderance of evidence presented against him,

---

[8] *Id*. at 17.

[9] *Id*.

[10] *Id*. at 3 and 53.

[11] *Id*. at 50-55; penned by Judge Maria Rosario B. Ragasa.

[12] *Id*. at 19.

this Court finds defendant Adriano Tan civilly liable against plaintiff Philippine National Bank; and that defendant Tan is ordered to return to plaintiff Philippine National Bank the amount of ₱520,000.00 including legal interest reckoned from August 28, 2000 until finality of this judgment;

3. That defendant Tan is hereby liable in the amount of ₱50,000.00 representing attorney's fees to be paid to defendant Bal and the amount of ₱50,000.00 representing attorney's fees to be paid to plaintiff PNB;

4. That, based on the findings made by this Court as contained in the body of this decision, defendant Bal's cross claim is hereby **DISMISSED**;

5. No pronouncement as to costs.

SO ORDERED.[13] (Emphasis in the original)

Ruling of the Court of Appeals:

In its November 19, 2012 Decision, the CA upheld the findings of the RTC. The appellate court pointed out that:

While it may be true that Bal had exceeded his authority in accommodating several checks presented for deposit by Tan, [PNB] failed to satisfactorily prove that Bal financially gained from his act of accommodating Tan or that any collusion existed between [Tan and Bal]. [PNB] also failed to present sufficient factual basis to hold Bal personally liable for his acts as officer of the bank[.] Hence, the trial court correctly dismissed [PNB's] claim against Bal for recovery of the amount based on insufficiency of evidence.[14]

Moreover, the CA affirmed the RTC's findings that there was sufficient evidence that Tan was the one who actually received the money and acknowledged said obligation to PNB through the execution of a promissory note in favor of said bank.[15] The dispositive portion of the appellate court's Decision reads:

---

[13] *Id.* at 55.

[14] *Id.* at 21.

[15] *Id.*

WHEREFORE, the appeal is **DENIED**. The decision dated December 10, 2008 issued by the Regional Trial Court of Pasay City, Branch 108 in Civil Case No. 00-0321 **is AFFIRMED**.[16] (Emphasis in the original)

PNB thereafter filed a motion for reconsideration but the CA denied it in its June 18, 2013 Resolution.[17]

Unsatisfied, PNB filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. It mainly asserts that Bal's violations of several office orders and BSP regulations were prejudicial to its interest and resulted to PNB's substantial losses. Thus, he should be held liable for his tortious act and gross negligence amounting to bad faith.[18]

Issue

The main issue in this case is whether or not Bal may be held personally liable on the drawings against uncollected check deposits in the amount of ₱520,000.00 in view of his violation of the existing policies of PNB.

Our Ruling

The instant Petition is unmeritorious.

After a careful review of the records on hand, We find no cogent reason to disturb the findings of the CA and the RTC. We likewise hold that Bal has not incurred any personal liability on the drawings against the uncollected bank deposits in question.

Firstly, We validate Bal's claim that "[a]fter careful evaluation of the [track] record and dealings of the depositor [he] decided to approve the check deposit."[19] PNB had acknowledged that Bal raised the same argument when he explained to the bank that his act of approving the withdrawals against the uncollected

---

[16] Id.

[17] Id. at 24-25.

[18] Id. at 40.

[19] Id. at 118.

deposits had been a mere act of accommodation to the valued clients of the bank, such as Tan.[20]

The findings of the trial court are apt on this point when it held that "[a]t the time Bal was called upon to approve the encashment of the dishonored checks, he made a judgment call based on his appraisal of Tan's banking history with PNB and the regularity of the checks presented on payment."[21]

We hold that Bal's questioned acts were therefore made within his discretion as branch manager.[22] In *Tan v. People*,[23] We held that as to the uncollected check deposits, the bank may honor the check *at its discretion* in favor of clients. Bal's position as branch head entails the exercise of such discretion.

Secondly, the PNB Administrative Adjudication Panel already penalized Bal for the same infraction. In its March 18, 1999 Decision,[24] the PNB Administrative Adjudication Panel penalized Bal with four (4) months suspension without prejudice to the filing of an appropriate court action on the part of the bank.[25]

Moreover, the trial court correctly interpreted the PNB's Administrative Adjudication Panel's pronouncement that its disposition finding Bal guilty of serious misconduct — "without prejudice to the filing of the appropriate action in court to protect the interests of the bank, including the recovery of the amounts involved"[26] — referred only to the recovery of the amount involved from the one who actually benefited from the fraud, that is, Tan. It is therefore Tan who must be pursued by PNB

---

[20] Id. at 171.

[21] Id. at 54.

[22] *See also Prudential Bank v. Mauricio*, 679 Phil. 369-394 (2012).

[23] 402 Phil. 833, 839 (2001); *reiterated in Abarquez v. Court of Appeals*, 955 Phil. 964, 975 (2003).

[24] *Rollo*, p. 121.

[25] Id.

[26] Id. at 121.

for the amount that it claims to have lost. In fact, PNB itself asserts that Tan had expressly acknowledged owing ₱520,000.00 to the bank and had in fact issued a couple of promissory notes to PNB as to such obligation.

In any case, since Bal was already penalized by PNB for his violations by way of a four-month long suspension, making him personally accountable for the liability that Tan had already acknowledged to be his would be tantamount to penalizing him twice for the same offense.

Lastly, Bal may not be held personally or solidarily liable. Settled is the rule that solidarity is never presumed. There is solidary liability when the obligation so states, or when the law or the nature of the obligation requires the same,[27] which are unavailing in the instant case.

WHEREFORE, the instant Petition is hereby **DENIED**. The assailed November 19, 2012 Decision and the June 18, 2013 Resolution rendered by the Court of Appeals in CA-G.R. CV No. 93687 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

---

[27] *Keihin-Everett Forwarding Co., Inc. v. Tokio Marine Malayan Insurance Co., Inc.*, G.R. No. 212107, January 28, 2019.

FIRST DIVISION

[G.R. No. 211034. November 18, 2020]

MARIO CHIONG BERNARDO, in his behalf and in behalf of all the heirs of the late JOSE CHIONG, *Petitioner, v.* **JOSE C. FERNANDO, LILIA C. FERNANDO, NOEMI FERNANDO MOLINA, CYNTHIA C. FERNANDO, AIDA FERNANDO POINTDEXTER and ELSA FERNANDO,** *Respondents.*

[G.R. No. 211076. November 18, 2020]

JOSEFINA L. BERNARDO, LETICIA L. BERNARDO, FELIX BERNARDO, and MARCELO SAN JUAN, *Petitioners, v.* **JOSE C. FERNANDO, LILIA C. FERNANDO, NOEMI FERNANDO MOLINA, CYNTHIA C. FERNANDO, AIDA FERNANDO POINTDEXTER and ELSA FERNANDO,** *Respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE OF THE PHILIPPINES (EXECUTIVE ORDER NO. 209); PATERNITY AND FILIATION; EVERY REASONABLE PRESUMPTION LEANS TOWARDS LEGITIMACY AND IS ESTABLISHED AT THE MOMENT OF BIRTH; PROOF OF FILIATION, WHEN NECESSARY.— The law requires that every reasonable presumption leans towards legitimacy, and establishes the status of a child from the moment of his birth. Proof of filiation becomes necessary only when the legitimacy of the child is being questioned, or when the status of a child born after 300 days following the termination of marriage is sought to be established. In case of the need to prove filiation, the same may only be raised in a direct and separate action instituted to prove the filiation of the child.

2. ID.; ID.; ID.; THE RIGHT TO INITIATE AN ACTION TO CLAIM LEGITIMATE FILIATION, WHICH IS

STRICTLY PERSONAL TO THE CHILD WHOSE FILIATION IS IN QUESTION, PASSES TO THE CHILD'S HEIRS ONLY IN CERTAIN INSTANCES.— [A]s provided by Article 173 of the Family Code, an action to claim legitimate filiation is strictly personal to the child whose filiation is in question, and he or she may exercise such anytime within his lifetime. The only three instances when such right passes to the child's heirs are: (1) when the child dies during minority; (2) when the child dies in a state of insanity; or (3) when the child dies after the commencement of the action.

In this case, petitioners seek to establish the legitimate status of their mother, Barbara. However, although there is a mention of Barbara's passing, there is nothing in the records of the case which would show that Barbara had died under any of the circumstances outlined under Article 173, which would have transmitted the right to claim her legitimate status to her heirs, herein petitioners. Given that petitioners here seek to prove Barbara's legitimate filiation to Jose Chiong absent any of the three circumstances under Article 173, they may not be considered to have the standing to pursue the same.

3. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; BIRTH CERTIFICATES; BEING A PUBLIC DOCUMENT, A BIRTH CERTIFICATE OFFERS *PRIMA FACIE* EVIDENCE OF FILIATION.— A birth certificate, being a public document, is an important piece of evidence, and offers *prima facie* evidence of filiation, in accordance with the rule that entries in official records made in the performance of the duties of a public officer are *prima facie* evidence of the facts therein stated.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; TO PROVE PATERNITY, THE PUTATIVE FATHER'S SIGNATURE ON THE FACE OF THE BIRTH CERTIFICATE IS NOT INDISPENSABLE AS LONG AS IT CAN BE SHOWN THAT HE PARTICIPATED IN ITS PREPARATION.— [F]or a birth certificate to prove paternity, it must be shown that the putative father had a hand in its preparation. . . .

To be sure, and contrary to the finding of the CA, the putative father's signature on the face of the birth certificate is not indispensable in ascribing probative weight to the same. For as long as it can be shown that the putative father participated

in the preparation of the certificate of birth, *e.g.* when the putative father provided the information for the entries to the certificate, or otherwise caused the registration of the birth, probative weight can be ascribed.

Unfortunately for petitioners, however, there was neither Jose Chiong's signature on Barbara's certificate of birth, nor any other proof to the effect that although his signature does not appear therein, he had a hand in the preparation of the same.

5. ID.; ID.; ID.; ID.; ID.; ID.; BAPTISMAL CERTIFICATES; A BAPTISMAL CERTIFICATE IS NOT PERSUASIVE IN PROVING A CHILD'S PATERNITY.— With respect to Barbara's baptismal certificate, as the CA correctly held, it may only be considered evidence of the administration of the sacraments on the dates so specified, but is not persuasive in proving the veracities of the entries therein, including the baptized child's paternity.

. . .

. . . The additional argument that the baptismal certificate should be considered a certificate of birth as it was executed prior to an established system of registry was also only alleged but not proved. Mario extends this by analogy, arguing that since at the time of Barbara's baptism, there was a strict prohibition in the Catholic religion against baptism of children born out of wedlock, the baptismal certificate could further prove a legitimate marriage between Jose Chiong and Ambrosia. This claim, both belated and unsubstantiated, cannot be considered by the Court as sufficient basis to grant petitioners' claim.

6. REMEDIAL LAW; EVIDENCE; BIRTH CERTIFICATES; JUDICIAL NOTICE AND JUDICIAL ADMISSIONS; PRESCRIPTIONS GOVERNING THE PREPARATION AND ACCOMPLISHMENT OF BIRTH CERTIFICATES IN THE SYSTEM OF REGISTRY ARE NOT MATTERS OF MANDATORY JUDICIAL NOTICE.— Rule 129, Section 1 of the Rules provides for the facts which the court must take judicial notice of without need of proof, . . .

Demonstrably, the prescriptions governing the preparation and accomplishment of birth certificates in the system of registry do not fall under any of the enumerated categories of facts. At

best, this allegation of a past protocol in the system of registry may fall under Section 2 of the same Rule, which provides for matters that the court *may*, in its sound discretion, opt to take judicial notice of. Being discretionary, the Court may not take judicial notice thereof if it is not convinced that the matter is of public knowledge, or capable of unquestionable demonstration, or otherwise ought to be known by judges because of their judicial functions.

APPEARANCES OF COUNSEL

Causing Sabarre Castro & Pelagio for petitioners in G.R. No. 211034.

Crisologo Evangelista & Associates, collaborating counsel for petitioners in G.R. No. 211034.

Rigoroso Galindez & Rabino for petitioners in G.R. No. 211076.

Santos Santos & Santos Law Offices for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court are consolidated[1] petitions[2] under Rule 45 of the Rules of Court (Rules), filed by Mario Chiong Bernardo (Mario) in his behalf and in behalf of all the heirs of the late Jose Chiong, and Josefina Bernardo (Josefina), Leticia L. Bernardo (Leticia), Felix Bernardo (Felix), and Marcelo San Juan (Marcelo) (collectively, Josefina, *et al.*), all assailing the Decision[3] dated November 7, 2013 (Decision) of the Court of Appeals (CA), Special Sixteenth Division, in CA-G.R. CV No. 92724.

---

[1] In accordance with this Court's Resolution dated June 2, 2014; *rollo* (G.R. No. 211034), pp. 126-127.

[2] Id. at 7-21.

[3] Id. at 93-112. Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Marlene Gonzales Sison and Amy C. Lazaro-Javier (now a Member of this Court) and *rollo* (G.R. No. 211076), pp. 20-39.

The assailed Decision reversed the Regional Trial Court's (RTC) Consolidated Decision[4] dated November 10, 2008, and dismissed the complaints filed by Mario and Josefina, *et al.* (collectively, petitioners) for lack of cause of action, as well as the compulsory counterclaim filed by Jose C. Fernando, Lilia C. Fernando (Lilia), Noemi Fernando Molina (Noemi), Cynthia C. Fernando (Cynthia), Aida Fernando Pointdexter (Aida), and Elsa Fernando (Elsa) (collectively, respondents).

The petitioners filed their respective Motions for Reconsideration,[5] but both were denied by the CA for lack of merit, through its Resolution dated January 27, 2014.[6]

Factual Antecedents

The uncontroverted factual history of the case revolves around five parcels of land left behind by the late Jose Chiong, covered by Transfer Certificate of Title (TCT) Nos. RT-26575, RT-26580, RT-26578, RT-26577 and RT-26576 (subject properties).[7]

On May 18, 1925, the late Jose Chiong executed a Deed of Donation, bequeathing the subject properties to Jose Chiong Fernando, the predecessor-in-interest of respondents. On June 18, 2002, respondents executed an "Affidavit of Identity [of] Heirs" (Affidavit), where they claimed to be the legal heirs of the late Jose Chiong. On the sole basis of the said Affidavit, respondents caused the cancellation of the titles of the subject properties under the original collective name of "Heirs of Jose Chiong" and had them transferred to their names, under TCT Nos. T-165083 to T-165087.

On September 25, 2003, Mario, on behalf of the heirs of the late Jose Chiong, filed a complaint for Annulment, Reconveyance and Accounting with Prayer for Preliminary Injunction[8] with

---

[4] Id. at 46-68. Penned by Presiding Judge Wilfredo T. Nieves.

[5] Id. at 33-46.

[6] *Rollo* (G.R. No. 211076), pp. 42-44.

[7] Id. at 47.

[8] Id. at 23.

the RTC of Malolos, Bulacan, Branch 84 against respondents, docketed as Civil Case No. 194-M-2003.

On November 17, 2003, Josefina, *et al.* and the heirs of Gregorio Domingo (Gregorio) as unwilling co-plaintiffs (petitioners in G.R. No. 211076) filed a separate complaint[9] for Recovery of Ownership and Possession, Declaration of Heirship and Partition before the RTC of Malolos Bulacan, Branch 82 against the same respondents, docketed as Civil Case No. 853-M-2003,[10] and offered the same averments as those in Mario's earlier complaint. Said complaint was also answered by respondents, countering with the same arguments they responded with in their Answer to Mario's complaint.

Arguing for his claim, Mario primarily alleged that his mother, Barbara Chiong (Barbara), was born on December 4, 1912 in Manila, to spouses Jose Chiong and Ambrosia Domingo (Ambrosia), as shown in the certified photocopy of her certificate of birth issued by the Local Civil Registrar (LCR) of Manila.[11] Also submitted was Barbara's Certificate of Baptism dated January 13,2006 to prove that Barbara was baptized on March 2, 1913 at Our Lady of Most Holy Rosary in Binondo, Manila.[12] Mario submitted that he and his siblings, namely Eduardo Bernardo (Eduardo), Felix, and Josefina are the children of Barbara. Hence, being grandchildren of Jose Chiong, they are the ones who are entitled to the subject properties. Mario averred that respondents were not the true heirs of Jose Chiong, but were only collateral relatives as descendants of Jose Chiong's cousin through their maternal grandfather,[13] whose claim in inheriting the subject properties was subordinate to his and his siblings' claim.

---

[9] Id. at 24.

[10] Id.

[11] Id. at 47.

[12] Id.

[13] Id. at 230.

He also assailed the validity of the Affidavit, which was the basis for the transfer of the properties from Heirs of Jose Chiong to respondents, alleging irregularities in its execution, including the allegation that Lilia, one of the affiants, had already passed away at the time of its execution.[14] Upon cross-examination, Mario acknowledged that indeed he was the one who caused the correction of the spelling of the surname of his mother Barbara, from "Chong" to "Chiong" through a mere request with the LCR of Valenzuela City, and that said request was made after the filing of the complaint.[15]

When confronted with the fact that in the marriage contract evidencing his marriage with Sevilla Delino, the names that Mario indicated there for him and his mother were "Mario Bernardo" and "Barbara Domingo" respectively, he explained that he merely erred in entering those names.[16] With respect to his relationship with the other parties to the suit, he also acknowledged that Eduardo, Josefina and Felix are his half-siblings by Jose Chiong and that Leticia is his sister-in-law.

For their part and to assail the validity of the Affidavit, Josefina, *et al*. presented several witnesses who testified as to the circumstances of the transfer of the title over the subject properties from the name of Jose Chiong to the names of the Heirs of Jose Chiong.

For their first witness, Josefina, *et al*. presented Edwin Flor Barroga (Barroga), the Deputy Register of Deeds of Bulacan, Tabang, Guiguinto Branch who testified that the cancellation of the title over the subject properties under the names of Heirs of Jose Chiong and the transfer of title were indeed effected by virtue of the Affidavit, and that the transfer's publication and the presentation of the affiants before the court were not deemed necessary at that time in accordance with the LRC Consulta Ruling No. 463 of the Land Registration Authority

[14] Id. at 48.

[15] Id.

[16] Id.

(LRA).[17] Barroga likewise testified that the issuance of the titles under the names of respondents was deemed a ministerial duty on the part of the Register of Deeds upon the presentation of the Affidavit.[18]

The facts as testified to by Barroga were further corroborated by Atty. Ramon C. Sampana (Sampana), then the Register of Deeds of Bulacan, who added that as the Register of Deeds, it was not within his function to examine beyond the face of the instrument submitted to him for registration. He also added that the non-publication of the Affidavit was in accordance with the LRC Consulta Ruling No. 453, and a decision dated October 5, 1964 of the LRA in the case of *Consolacion Chikano, et al. v. Register of Deeds of Samar*.[19]

Josefina, *et al*. also presented Candelaria delos Santos (delos Santos), the Statistical Coordination I of National Statistics Office (NSO), Provincial Branch, Malolos City, Bulacan, who testified that her office has no birth records pertaining to the following, namely: Felix D. Bernardo, Josefina Bernardo, Eduardo Bernardo, Gregorio Chiong, Azucena P. Chiong, Apolonia D. Chiong (Apolonia), and Jose Antonio Fernando, Jr.[20] In addition, they also presented Arlene Rosales (Rosales), then the City Civil Registrar of Valenzuela City, who testified that the National Archives also has no records of the birth certificates of the above Bernardos and Chiongs, apart from Gregorio Domingo and Gregorio Chiong,[21] whom Mario alleged is his mother's brother. She also testified that persons born before 1945 could apply for registration at the LCR, but that the Bernardos and the Chiongs never applied for the same.[22]

---

[17] Id. at 48-49.

[18] Id. at 49.

[19] Id. at 49-50.

[20] Id. at 50.

[21] Id.

[22] Id. at 50-51.

On the other hand, respondents, through their Answer with Counterclaim, disputed Mario's assertions, and argued that their predecessor-in-interest, Jose Chiong Fernando, legally acquired the subject properties from Jose Chiong through a Deed of Donation executed on May 18, 1925. Further, they argued that the authenticity and enforceability of the said donation were sustained by a Court of First Instance (CFI) Decision dated November 24, 1969, in Civil Case No. 1902, which was however not found in the records. Respondents prayed for the dismissal of the complaint along with a counterclaim for damages, attorney's fees and costs of suit.

The two complaints were ordered consolidated by Presiding Judge Wilfredo T. Nieves of Branch 84 of RTC Malolos, Bulacan who, through a Consolidated Decision[23] dated November 10, 2008, decided in favor of petitioners, to wit:

> WHEREFORE, judgment is hereby rendered in favor of the Plaintiff Mario Chiong Bernardo and his siblings, plaintiffs [sic] heirs of Josefina Chiong and the heirs of Gregorio Chiong as follows:
>
> 1. declaring as null and void the affidavit of identity (heirs) executed by the defendants Fernandos;
>
> 2. ordering the defendants Fernandos to reconvey to the plaintiff Mario Chiong Bernardo and his siblings and the heirs of Josefina and Gregorio Chiong the subject five (5) real properties; and
>
> 3. To pay the costs of suit.
>
> SO ORDERED.[24]

The RTC was persuaded that by preponderance of evidence, Mario was able to prove that Barbara was indeed the daughter of Jose Chiong.[25] It respected and gave credence to and considered authentic and legitimate both Barbara's birth certificate, which

---

[23] Id. at 46-68.

[24] Id. at 67-68.

[25] Id. at 63.

was registered on December 7, 1912, and baptismal certificate, which was dated March 2, 1913.[26]

In ruling that Barbara's birth certificate was authentic and legitimate, it found that, on its face, the certificate showed that Barbara was born a legitimate daughter of Jose Chiong. The RTC further found that the fact that the dorsal portion of the same, containing an acknowledgment of either parent, was not presented did not take away from its authenticity. Citing Section 44,[27] Rule 130 of the Rules, it held that entries in official records made in the performance of official duty are *prima facie* evidence of the facts stated therein[28] and, therefore, the birth certificate of Barbara should be given full probative value, *viz*.:

> Withal, Article 172 (now 265) of the Family Code provides that the filiation of legitimate children is established by any of the following: (1) The record of birth appearing in the civil register or a final judgment; or (2) an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned; or any other means allowed by the Rules of Court or special laws which may consist of the child's baptismal certificate, a judicial admission, a family bible in which the child's name has been entered, a common reputation respecting the child's pedigree, admission by silence, the testimony of witnesses, and other kinds of proof of admission under Rule 130 of the Rules of Court (*Cruz v. Cristobal*, G.R. No. 140422, August 7, 2006, 498 SCRA 37). Moreover, baptismal certificate is one of the acceptable documentary evidence to prove filiation in accordance with the Rules of Court and Jurisprudence.[29]

The RTC also held that the fact that some documents indicated Barbara's surname as "Domingo" was aptly explained with the reason that Ambrosia had harbored anger towards Jose Chiong,

---

[26] Id.

[27] RULES OF COURT, Rule 130, Sec. 44 provides:

> Sec. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[28] *Rollo* (G.R. No. 211076), p. 64.

[29] Id.

so much so that she refused to let her children use "Chiong" as their surname.[30] It further held that the correction of the spelling of Mario's surname from "Chong" to "Chiong" did not affect the legitimacy of Mario's claim, as such correction was not established to be improper or illegal, and hence could be presumed proper, regular, and pursuant to the performance of the duties of the LCR concerned.[31]

With respect to the claim of Josefina, *et al*., the RTC held that although Josefina and her siblings did not present any documentary proof of their filiation to Jose Chiong through their mother, Apolonia, the admission of Mario in open court that Apolonia as well as Gregorio were the legitimate and full-blooded siblings of Barbara, and therefore also children of Jose Chiong, was deemed sufficient to prove their claim.[32] Based on this, the RTC concluded that Mario, Josefina, *et al*., and respondent heirs of Gregorio Chiong were similarly situated, all of them being direct grandchildren of Jose Chiong, and were therefore all entitled to the estate of Jose Chiong as legitimate descendants.[33]

The RTC added that whoever alleges the illegitimacy of a child must prove such allegation, and given that respondents offered no evidence to refute Barbara's legitimate status, the same should be upheld.[34]

The RTC also dismissed respondents' allegations that the subject properties were already donated by Jose Chiong to their father, Jose Chiong Fernando, since no documentary evidence

---

[30] Id.

[31] Id. at 65.

[32] Id. The RTC held thus: Basically, an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof unless contradicted upon showing that it was made through palpable mistake or that no such declaration or omission of a party as to a relevant fact may be given in evidence against him (Section 5, Rule 30).

[33] Id.

[34] Supra note 28.

was submitted to prove the same.[35] Particularly, respondents asserted that the donation was affirmed by the CFI of Bulacan in Civil Case No. 1092, but no such decision was presented before the RTC. The RTC was also unpersuaded by respondents' submission that the Register of Deeds merely committed an error in placing the titles of the subject properties under the name of heirs of "Jose Chiong" instead of "Jose Chiong Fernando" when the titles were reconstituted. The RTC found it incredible that from March 17, 1959 when the titles were reconstituted, until their transfer to respondents' names by way of the execution of the Affidavit, respondents were never alerted by the error of omission of the surname "Fernando". It also noted that such an assertion was belied by the fact that in the Affidavit, the respondents were identified as heirs of "Jose Chiong".[36]

It also discredited the Affidavit as invalid for being an act of misrepresentation,[37] finding that not only were most of the heirs named therein not signatories thereto, but that some of the heirs were abroad while one was already deceased at the time of its execution. It also found fault in the Affidavit for its lack of notarization.[38] It also noted that respondents could not validly invoke prescription by long occupation, after having admitted that they were, in fact, not in possession of the subject properties.

Finally, the RTC ruled that even granting *in arguendo* that there was a legitimate donation of the subject properties to Jose Chiong Fernando, the same would still have to be subordinate to the claim of petitioners on the estate of Jose Chiong, as his legitimate heirs.[39]

---

[35] Supra note 31. Emphasis omitted.

[36] Id. at 66.

[37] Id.

[38] Id.

[39] Id. at 67.

Respondents appealed to the CA *via* Rule 41 of the Rules of Court, which, through its Decision[40] dated November 7, 2013, granted the appeal, reversed the consolidated decision of the RTC, and dismissed Civil Case Nos. 194-M-2003 and 853-M-2003 for lack of cause of action. The dispositive portion of which reads:

> WHEREFORE, premises considered, the Appeal is GRANTED. The Consolidated Decision dated 10 November 2008 of the Regional Trial Court, Branch 84, Malolos City, Bulacan, is hereby REVERSED and SET ASIDE. Civil Case Nos. 194-M-2003 and 853-M-2003 are DISMISSED for lack of cause of action. Appellants' compulsory counterclaim in Civil Case Nos. 194-M-2003 and 853-M-2003, respectively, is also DISMISSED.
>
> SO ORDERED.[41]

In finding merit in the appeal, the CA held that in this case, petitioners bore the burden of proving their claim as against respondents by a preponderance of evidence.[42] Here, the CA ruled that it was unable to accept the RTC's conclusion on the legitimate status of Barbara and her legitimate filiation to Jose Chiong.[43] It observed that the RTC made a sweeping conclusion that respondents failed to offer any evidence to refute the presumption of Barbara's legitimacy as indicated in her birth certificate,[44] when, citing *Tison v. Court of Appeals*,[45] such presumption of legitimacy, which may not be attacked collaterally, only applies if the child whose legitimacy is in question was born in wedlock.[46]

Casting doubt on the legitimacy of the marriage of Ambrosia, Barbara's mother, and Jose Chiong, the CA ratiocinated thus:

---

[40] *Rollo* (G.R. No. 211034), pp. 93-112.

[41] Id. at 111.

[42] Id. at 99.

[43] Id. at 101-102.

[44] Id. at 102.

[45] 342 Phil. 550 (1997).

[46] *Rollo* (G.R. No. 211034), p. 102.

We carefully scoured the records of the case, save for Barbara Domingo's entry in her certificate of birth and baptismal certificate, and We find that there is absolutely no proof of Jose Chiong's marriage to Barbara Domingo's mother, Ambrosia Domingo. It bears stressing that a finding that the late Jose Chiong was married to Ambrosia Domingo is necessary considering that appellants insistently argue that Jose Chiong died without any issue. Unfortunately, no marriage certificate or marriage contract — doubtless the best evidence of Jose Chiong's and Ambrosia Domingo's marriage, if one had been solemnized - was offered in evidence. None of the witnesses presented by appellees could affirm the supposed marriage of Jose Chiong and Ambrosia Domingo. At best, their testimonies only revealed that Barbara Domingo is the mother of appellee Mario Bernardo. It has not been established as well that Jose Chiong and Ambrosia Domingo really held themselves out to the public as man-and-wife.[47]

First, the CA discussed each document offered by petitioners to prove Barbara's legitimate status. It ruled that with respect to Barbara's birth certificate, because its dorsal portion was not presented in evidence, the CA had no way of ascertaining whether Jose Chiong had a hand in its preparation, particularly pertaining to the entries indicating paternity.[48] It added that the mere fact that the late Jose Chiong was identified in the frontal portion of the birth certificate as the father of Barbara Domingo only evidenced the fact which gave rise to its execution, or the birth of a child.[49] Citing *Angeles v. Maglaya*,[50] the CA held that for a birth certificate to be validating proof of paternity, the signature of the alleged father is necessary.[51]

Second, the CA also observed that there was no offered evidence of any final judgment decreeing that Barbara was the legitimate child of the late Jose Chiong. There was likewise no

---

[47] Id. at 102-103.

[48] Id. at 105.

[49] Id.

[50] 506 Phil. 347 (2005).

[51] *Rollo* (G. R. No. 211034), p. 105.

written admission by Jose Chiong of legitimate filiation in a public document or a private handwritten instrument.[52]

Third, it also found that Barbara's baptismal certificate had no probative value in establishing Barbara's legitimate filiation with Jose Chiong. Citing the cases of *Fernandez v. Fernandez*[53] and *Heirs of Pedro Cabais v. Court of Appeals*,[54] the CA ruled that a baptismal certificate is evidence only of the administration of sacrament on the dates therein specified, but not proof as to the veracity of the declarations concerning the parentage of the person baptized.[55]

The CA also dismissed the judicial affidavits executed by Daniel S. Dionido and Ma. Julieta S. Dionido, holding that they merely confirmed the relationship between Barbara and Mario, as mother and child, respectively, but went no further as to purport that Barbara was the legitimate daughter of the late Jose Chiong.[56]

The CA also found that with respect to the filiation of Apolonia and Gregorio to Jose Chiong, whom petitioners alleged are full-blood siblings of Barbara, no evidence was offered to prove their legitimate filiation.[57] It noted the two certifications of the Civil Registrar of Valenzuela City to the effect that it had no records of the birth of Gregorio and Apolonia. It also found itself hard-pressed to find sound basis for the RTC's sole and heavy reliance on Mario's testimony that Gregorio and Apolonia were full-blood siblings of his mother, and anchored its finding of legitimate filiation on the same, and instead pointed out that a testimony to this effect is not included among the modes of

---

[52] Id. at 106.

[53] 416 Phil. 322 (2001).

[54] 374 Phil. 681 (1999).

[55] *Rollo* (G.R. No. 211034), pp. 106-107.

[56] Id. at 107.

[57] Id. at 108.

establishing legitimate filiation under Article 172 of the Family Code.[58]

In all, the CA found that since petitioners failed to prove the legitimate filiation of Barbara, Gregorio and Apolonia to the late Jose Chiong, they had no cause of action against respondents in seeking the annulment of the Affidavit, as well as the reconveyance and partition of the subject properties. As well, they had no cause of action for the cancellation of the certificates of title issued in the names of respondents, or for the accounting of proceeds received for the use and enjoyment of the subject properties.[59]

The CA also found that contrary to respondents' prayer, an award of moral and exemplary damages was also not in order as the latter failed to establish that the present suit was one of malicious prosecution.[60] There was also no factual basis found for the award of attorney's fees.

Both Mario and Josefina, *et al*.[61] filed their separate Motions for Reconsideration, which were both denied by the CA for lack of merit, in its Resolution dated January 27, 2014.[62]

On February 25, 2014, Josefina, *et al*. filed the present Petition for Review,[63] while Mario filed his on March 20, 2014.[64] Respondents filed a Motion to Consolidate[65] on April 24, 2014. The Court, through its Resolution dated June 2, 2014,[66] granted the consolidation of G.R. No. 211034 and G.R. No. 211076.

---

[58] Id.

[59] Id.

[60] Id. at 110.

[61] *Rollo* (G.R. No. 211076), pp. 69-78.

[62] Id. at 43-44.

[63] Id. at 3-15.

[64] *Rollo* (G.R. No. 211034), pp. 7-21.

[65] *Rollo* (G.R. No. 211076), pp. 122-129.

[66] *Rollo* (G.R. No. 211034), p. 126.

By way of Comment,[67] respondents counter petitioners' Petitions by reiterating their argument on the validity of the donation by which their predecessor-in-interest Jose Chiong Fernando obtained the subject properties. They allege that the validity of said donation was already upheld by a November 24, 1969 decision of the CFI Bulacan in Civil Case No. 1092, where Jose Chiong was found to have been missing for 10 years and declared presumptively dead without any issue.[68] Respondents also echoed the findings of the CA, in that none of the documents the petitioners offered in evidence proved that Ambrosia was legally married to Jose Chiong,[69] and that the other documents submitted even seemed to support the contrary, in that in other documents, the names of Barbara, Apolonia and Gregorio were surnamed Domingo, and not Chiong.[70]

In their Reply[71] to respondents' Comment, Josefina, *et al.* fault respondents' inconsistency in the basis of their claim, *i.e.* they claim that their entitlement towards the subject properties first by virtue of the fact that they claimed to be the Heirs of Jose Chiong through the Affidavit, and then alternatively claim to have obtained the subject properties by virtue of a deed of donation of Jose Chiong in favor of their predecessor-in-interest, Jose Fernando.[72] Josefina, *et al.* argue that the bases for respondents' claim cannot be both true.[73] Finally, Josefina, *et al.* submit that Barbara's birth certificate still holds probative value despite the lack of Jose Chiong's signature therein. They argue that the Court must take judicial notice of the fact that during the birth of Barbara, prior to the passage of

---

[67] *Rollo* (G.R. No. 211076), pp. 183-212.

[68] Id. at 185.

[69] Id. at 200.

[70] Id. at 188-189.

[71] Id. at 216-219.

[72] Id. at 216-217.

[73] Id. at 217.

Commonwealth Act No. 3753, only the attending physician or midwife was required to sign in the birth certificates, without such similar requirement for the parents of the born child.[74]

For his Reply,[75] Mario argues that respondents failed to prove that they come from the bloodline of Jose Chiong, and should therefore not be entitled to own the subject properties.[76] He likewise continues assailing the validity of the Affidavit for being perjured and for containing various misrepresentations.[77] He also counters that contrary to the findings of the CA, he was able to offer documentary evidence to prove the legitimate filiation of his mother, Barbara, to Jose Chiong.[78]

Issue

The long and interwoven questions of the present case turn on a primary issue of who among the parties sufficiently established their right to the subject properties.

On the one hand, petitioners Mario and Josefina, *et al*. ground their claim on the main allegation that they are direct descendants of the late Jose Chiong, being his grandchildren through Barbara. On the other, respondents base their entitlement to the subject properties on the deed of donation executed by the late Jose Chiong to Jose Chiong Fernando, of whom they claim to be successors-in-interest, being, as they claim in the Affidavit, the latter's heirs.

The Court's Ruling

The Court finds the consolidated petitions lacking in merit.

The present controversy weaves the application of several provisions of law, foremost of which are those pertaining to

---

[74] Id. at 218.

[75] Id. at 226-266.

[76] Id. at 227.

[77] Id. at 230-231.

[78] Id. at 238-248.

filiation. Executive Order No. 209,[79] otherwise known as the Family Code of the Philippines, particularly Article 172, outlines the modes by which one may prove filiation:

> ART. 172. The filiation of legitimate children is established by any of the following:
>
> (1) The record of birth appearing in the civil register or a final judgment; or
>
> (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.
>
> In the absence of the foregoing evidence, the legitimate filiation shall be proved by:
>
> (1) The open and continuous possession of the status of a legitimate child; or
>
> (2) Any other means allowed by the Rules of Court and special laws. (265a, 266a, 267a)

The law requires that every reasonable presumption leans towards legitimacy,[80] and establishes the status of a child from the moment of his birth.[81] Proof of filiation becomes necessary only when the legitimacy of the child is being questioned, or when the status of a child born after 300 days following the termination of marriage is sought to be established.[82] In case of the need to prove filiation, the same may only be raised in a direct and separate action instituted to prove the filiation of the child.[83]

---

[79] Signed on July 6, 1987.

[80] Estelito P. Mendoza and Ivy D. Patdu, FILIATION AND LEGITIMACY, 52 ATENEO L.J. 356 (2007), citing *Concepcion v. Court of Appeals*, G.R. No. 123450, August 31, 2005, 468 SCRA 438, 448.

[81] *Concepcion v. Court of Appeals*, id. at 453.

[82] Id.

[83] *Geronimo v. Santos*, G.R. No. 197009, September 28, 2015, 771 SCRA 508, 521.

Relatedly, as provided by Article 173 of the Family Code, an action to claim legitimate filiation is strictly personal to the child whose filiation is in question, and he or she may exercise such anytime within his lifetime. The only three instances when such right passes to the child's heirs are: (1) when the child dies during minority; (2) when the child dies in a state of insanity; or (3) when the child dies after the commencement of the action.

In this case, petitioners seek to establish the legitimate status of their mother, Barbara. However, although there is a mention of Barbara's passing, there is nothing in the records of the case which would show that Barbara had died under any of the circumstances outlined under Article 173, which would have transmitted the right to claim her legitimate status to her heirs, herein petitioners. Given that petitioners here seek to prove Barbara's legitimate filiation to Jose Chiong absent any of the three circumstances under Article 173, they may not be considered to have the standing to pursue the same.

Further, even if we grant petitioners the standing to claim Barbara's legitimate status for purposes of proving their own entitlement to the subject properties, the Court nevertheless agrees with the CA that petitioners failed to substantiate their principal contention.

The CA correctly pointed out the RTC's error in its finding that the presumption of legitimacy in favor of Barbara prevailed over any direct or collateral assailment of the same. As the CA observed, without any proven lawful marriage between Ambrosia and Jose Chiong, no presumption of legitimate filiation arose in favor of Barbara. Since no such presumption arose, it was incumbent on both Mario and Josefina, *et al.* to prove the same.

In the present case, since a certificate of birth was presented, the issues and burdens revolve around the calibration of the probative value of said certificate for purposes of proving Barbara's legitimate filiation with Jose Chiong. A birth certificate, being a public document, is an important piece of

evidence, and offers *prima facie* evidence of filiation,[84] in accordance with the rule that entries in official records made in the performance of the duties of a public officer are *prima facie* evidence of the facts therein stated. However, as the Court has held in several cases, for a birth certificate to prove paternity, it must be shown that the putative father had a hand in its preparation.[85] In *Jison v. Court of Appeals*,[86] it was explained thus:

> MONINA's reliance on the certification issued by the Local Civil Registrar concerning her birth (EXHs. E and F) is clearly misplaced. It is settled that a certificate of live birth purportedly identifying the putative father is not competent evidence as to the issue of paternity, when there is no showing that the putative father had a hand in the preparation of said certificates, and the Local Civil Registrar is devoid of authority to record the paternity of an illegitimate child upon the information of a third person. Simply put, if the alleged father did not intervene in the birth certificate, *e.g.*, supplying the information himself: the inscription of his name by the mother or doctor or registrar is null and void; the mere certificate by the registrar without the signature of the father is not proof of voluntary acknowledgment on the latter's part. In like manner, FRANCISCO's lack of participation in the preparation of the baptismal certificates (EXHs. C and D) and school records (EXHs. Z and AA) renders these documents incompetent to prove paternity, the former being competent merely to prove the administration of the sacrament of baptism on the date so specified. x x x[87]

To be sure, and contrary to the finding of the CA, the putative father's signature on the face of the birth certificate is not indispensable in ascribing probative weight to the same. For as long as it can be shown that the putative father participated in the preparation of the certificate of birth, *e.g.* when the putative

---

[84] *Sayson v. Court of Appeals*, G.R. No. 89224-25, January 23, 1992, 205 SCRA 321, 328.

[85] *Perla v. Baring*, G.R. No. 172471, November 12, 2012, 685 SCRA 101, citing *Cabatania v. Court of Appeals*, 484 Phil. 42, 50 (2004).

[86] G.R. No. 124853, February 24, 1998, 286 SCRA 495.

[87] Id.

father provided the information for the entries to the certificate,[88] or otherwise caused the registration of the birth,[89] probative weight can be ascribed.

Unfortunately for petitioners, however, there was neither Jose Chiong's signature on Barbara's certificate of birth, nor any other proof to the effect that although his signature does not appear therein, he had a hand in the preparation of the same.

With respect to Barbara's baptismal certificate, as the CA correctly held, it may only be considered evidence of the administration of the sacraments on the dates so specified, but is not persuasive in proving the veracities of the entries therein, including the baptized child's paternity.[90]

Having failed at discharging the burden of proof incumbent upon petitioners in establishing Barbara's legitimate status, no legitimate filiation between Barbara and Jose Chiong may be recognized. With no legitimate status for Barbara upon which petitioners ground their entitlement to the subject properties, no such ancillary right arose for petitioners, and no right to demand reconveyance and annulment of the subject TCTs may be adjudged in their favor.

Petitioners' allegation that the Court should take judicial notice of when the signature of the father of the child was or was not required in the certificate of birth is misplaced.[91] The additional argument that the baptismal certificate should be considered a certificate of birth as it was executed prior to an established system of registry[92] was also only alleged but not

---

[88] *Ilano v. Court of Appeals*, G.R. No. 104376, February 23, 1994, 230 SCRA 242, 257.

[89] *Arado v. Alcoran*, G.R. No. 163362, July 8, 2015, 762 SCRA 37, 52; *Castro v. Court of Appeals*, G.R. Nos. L-50974-75, May 31, 1989, 173 SCRA 656, 659.

[90] *Rollo* (G.R. No. 211076), p. 169.

[91] Id. at 237.

[92] Id. at 244.

proved. Mario extends this by analogy, arguing that since at the time of Barbara's baptism, there was a strict prohibition in the Catholic religion against baptism of children born out of wedlock, the baptismal certificate could further prove a legitimate marriage between Jose Chiong and Ambrosia. This claim, both belated and unsubstantiated, cannot be considered by the Court as sufficient basis to grant petitioners' claim.[93]

Rule 129, Section 1 of the Rules provides for the facts which the court must take judicial notice of without need of proof, to wit:

> **SECTION 1.** *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a).

Demonstrably, the prescriptions governing the preparation and accomplishment of birth certificates in the system of registry do not fall under any of the enumerated categories of facts. At best, this allegation of a past protocol in the system of registry may fall under Section 2[94] of the same Rule, which provides for matters that the court *may*, in its sound discretion, opt to take judicial notice of. Being discretionary, the Court may not take judicial notice thereof if it is not convinced that the matter is of public knowledge, or capable of unquestionable demonstration, or otherwise ought to be known by judges because of their judicial functions.

---

[93] Id. at 249.

[94] RULES OF COURT, Rule 129, Sec. 2 provides:

> **SEC. 2.** *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1a).

That this case has already lasted for over 17 years since Mario first instituted the Complaint for Annulment, Reconveyance and Accounting is lamentable. Even so, the Court maintains that no length of time will ripen a mere allegation lacking proof into a demandable right, least of all in the case where legitimate filiation is the status which may be granted or withheld.

WHEREFORE, the Consolidated Petitions are hereby **DENIED**. Accordingly, the Decision dated November 7, 2013 and Resolution dated January 27, 2014 of the Court of Appeals, Special Sixteenth Division, in CA-G.R. CV No. 92724 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Zalameda, and *Delos Santos,*[*] *JJ.*, concur.

Carandang, J., on official leave.

[*] Designated acting Member per Special Order No. 2788-A dated September 29, 2020.

THIRD DIVISION

[G.R. No. 233448. November 18, 2020]

SM PRIME HOLDINGS, INC., *Petitioner*, *v.* **ALFREDO G. MARAÑON, JR., in his official capacity as the Governor of the Province of Negros Occidental and Chairman of the Committee on Awards and Disposal of Real Properties, the PROVINCE OF NEGROS OCCIDENTAL, and the COMMITTEE ON AWARDS AND DISPOSAL OF REAL PROPERTIES OF THE PROVINCE OF NEGROS OCCIDENTAL and its Members, namely: PATRICK LACSON, ATTY. MARY ANN MANAYON-LAMIS, NILDA[*] GENEROSO, LUCILLE I. CHAVEZ-PINES, MERLITA V. CAELIAN, ENRIQUE S. PINONGAN, ERNIE F. MAPA, SANGGUNIANG PANLALAWIGAN and its Members, and AYALA LAND, INC.,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; DEFINITION AND RATIONALE FOR THE PROSCRIPTION AGAINST FORUM-SHOPPING.— Forum shopping consists in the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another, and possibly favorable, opinion in another forum (other than by appeal or by special civil action of *certiorari*), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

The rationale for the rule against forum shopping is as follows:

> It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts

[*] Referred to as "Nelda" in some parts of the *rollo*.

to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.

2. ID.; ID.; ID.; FORUM-SHOPPING IS COMMITTED WHEN THE ACTIONS INVOLVE THE SAME ESSENTIAL FACTS AND PARTIES AND SEEK ESSENTIALLY THE SAME RELIEF.—SMPHI committed forum shopping.

In all the proceedings mentioned above, SMPHI is asking for essentially the same relief-to be declared as the winning bidder in the bidding dated July 7, 2011. Notably, the main relief being asked by SMPHI in SCA Case No. 11-13803, CA-G.R. CEB-SP No. 06084, even in the COA Decision dated September 21, 2012, and the LRA Resolution dated March 17, 2014 is founded on the same incidents.

. . .

. . . [T]he cases before the RTC Branch 48 and RTC Branch 50 involve the same essential facts and circumstances. There is an identity of parties who represent the same interests in both actions. Also, the two actions essentially touch on the same core issues. The actions likewise raise identical cause of actions.

3. ID.; ID.; ID.; CAUSE OF ACTION, DEFINED; ONE WAY TO DETERMINE WHETHER THE CAUSES OF ACTION ARE IDENTICAL IS TO ASCERTAIN WHETHER THERE IS AN IDENTITY OF THE FACTS ESSENTIAL TO THE MAINTENANCE OF THE TWO ACTIONS; CASE AT BAR.— "Cause of action" is the act or omission by which a party violates the right of another. It may be argued that the cause of action in the RTC Branch 48 was the execution of the Deed of Conditional Sale and Contract of Lease between the Province and ALI, while in SCA Case No. 11-13803 it was the issuance of Resolution No. 11-001. However, identity of causes of action does not mean absolute identity. One way to determine whether the causes of action are identical is to ascertain whether there is an identity of the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain

both, the two actions are considered the same, and a judgment in the first case would be a bar to the subsequent action. "*Hence, a party cannot, by varying the form of action or adopting a different method of presenting the case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies.*"

APPEARANCES OF COUNSEL

Puno & Puno for petitioner.
Provincial Legal Office for A. Maranon, Jr., *et al.*
Hermosura Navarro Sison & Ongsiako for respondent Ayala Land.

D E C I S I O N

INTING, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Resolutions respectively dated March 3, 2017[2] and July 26, 2017[3] of Branch 48, Regional Trial Court, Bacolod City (RTC Branch 48) in Civil Case No. 14-14323 dismissing the complaint of SM Prime Holdings, Inc. (SMPHI) on the ground of forum shopping.

The Antecedents

On April 8, 2011, SMPHI wrote then Governor of the Province of Negros Occidental (the Province), Alfredo G. Marañon, Jr. (Gov. Marañon) offering to lease four properties owned by the Province.[4] On June 8, 2011, the Province issued an Offer to Sell or Lease[5] its properties through public auction. The Offer to Sell or Lease contained the eligibility requirements, terms

[1] *Rollo*, pp. 15-37.

[2] *Id.* at 42-47; penned by Presiding Judge Rosario Ester B. Orda-Caise.

[3] *Id.* at 48-51.

[4] *Id.* at 180-183.

[5] *Id.* at 185-186.

and conditions, evaluation criteria, and the date of the opening of bids set on June 24, 2011.

On June 16, 2011, Gov. Marañon wrote SMPHI informing it that the Province intended to sell or lease all of its properties and not just the portions intended by the latter. Gov. Marañon further urged SMPHI to submit its bid proposal if it was interested in participating in the bidding. SMPHI replied[6] saying that it would be inappropriate for it to join the bidding believing that its Letter dated April 8, 2011 constituted as an Unsolicited Proposal under Republic Act No. (RA) 6957,[7] as amended by RA 7718.[8]

The bidding took place as scheduled on June 24, 2011. However, because there was only one participant, which was Ayala Land, Inc. (ALI), the bidding was declared a failure; a second bidding was scheduled on July 7, 2011. In the second bidding, the participants were ALI and SMPHI. However, since both of their respective bids were lower than the appraised value set by the Province's Committee on Awards and Disposal of Properties (the Committee), the second bidding was also declared a failure. By reason thereof, the Committee issued Resolution No. 11-001[9] that formally declared the second bidding a failure and further stated that the disposal of the properties shall be done through negotiation. In connection therewith, ALI and SMPHI were invited to a conference.

After a discussion on the terms and conditions of the negotiated sale and lease of the properties, only ALI submitted a proposal. Eventually, ALI's offer was accepted resulting in the execution

---

[6] See letter dated June 28, 2011, *id*. at 190-191.

[7] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes.

[8] An Act Amending Certain Sections of Republic Act No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes."

[9] *Rollo*, p. 194.

by the Province of a Deed of Conditional Sale[10] (DCS) and Contract of Lease[11] (COL) both dated April 26, 2012 in favor of ALI.

On May 21, 2014, SMPHI filed a Complaint for Declaration of Nullity of the Deed of Conditional Sale and Contract of Lease[12] before the RTC Branch 48. SMPHI invoked Article 1409[13] of the Civil Code asserting that the Province fraudulently manipulated the bidding in favor of ALI. According to SMPHI, the Province violated Commission on Audit (COA) Circular No. 92-386, Prescribing Rules and Regulations on Supply and Property Management in the Local Governments, as amended.[14]

SMPHI illustrated the fraud allegedly committed by the Province in the following manner: a) only SMPHI and ALI had expressed interest in the properties of the Province; b) that with SMPHI making an unsolicited proposal ahead of the Offer to Sell or Lease in the form of its Letter dated April 8, 2011 to Gov. Marañon, the latter was made aware that only ALI would submit an offer; c) that with only one bidder, the Committee would have a reason to declare a failure of bidding; d) that during the second bidding, the Committee, after ascertaining that SMPHI had submitted a superior offer than ALI, still declared a failure to bid; e) that this paved the way for the negotiated sale and lease of the properties; and f) that the disclosure of the floor price set by the Committee after the latter had seen

---

[10] *Id*. at 166-172.

[11] *Id*. at 146-154.

[12] *Id*. at 300-313.

[13] Art. 1409. The following contracts are inexistent and void from the begining:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

x x x x

[14] Section 197 of Commission on Audit (COA) Circular No. 92-386 has been amended by COA Circular No. 003-17 dated October 25, 2017.

that SMPHI submitted a higher offer than ALI was part of the scheme to manipulate the results and ensure that the Province could proceed to a negotiated sale and lease with ALI.

In response to the complaint, respondents[15] filed a Joint Answer with Counterclaim[16] contending, among others, that SMPHI had already brought the same issues before the COA, which had rendered the Decision No. 2012-147[17] on September 21, 2012; and that Branch 50, RTC, Bacolod City (RTC Branch 50) in Special Civil Action (SCA) Case No. 11-13803 already found no grave abuse of discretion on the part of the Province in issuing Resolution No. 11-001 in its Decision[18] dated January 23, 2014.

By way of special and affirmative defenses, respondents contended that SMPHI is guilty of forum shopping since there were other cases that had been filed involving the same parties and cause of action, and arising from the same incident, to wit: the aforesaid SCA Case No. 11-13803; CA-G.R. CEB-SP No. 06084; and Consulta No. 5337 before the Land Registration Authority (LRA). Thus, they prayed for the dismissal of the case.

ALI also filed its answer to the complaint where it likewise prayed for the dismissal of the case on the ground of forum shopping.

---

[15] Alfredo G. Marañon, Jr., in his official capacity as the Governor of the Province of Negros Occidental and Chairman of the Committee on Awards and Disposal of Real Properties, the Province of Negros Occidental, and the Committee on Awards and Disposal of Real Properties of the Province of Negros Occidental and its Members, namely: Patrick Lacson, Atty. Mary Ann Manayon-Lamis, Nilda Generoso, Lucille I. Chavez-Pines, Merlita V. Caelian, Enrique S. Pinongan, Ernie F. Mapa, Sangguniang Panlalawigan and its Members, and Ayala Land, Inc.

[16] *Rollo*, pp. 358-419. Excluding Ayala Land, Inc.

[17] *Id*. at 249-266.

[18] *Id*. at 664-685.

Later, respondents filed a Motion for Preliminary Hearing[19] on their affirmative defenses. The RTC Branch 48 granted the motion and directed the parties to submit their respective memoranda.

In the assailed Resolution[20] dated March 3, 2017, the RTC Branch 48 dismissed SMPHI's complaint on the ground of forum shopping. It held that the case before it and the other cases as above-mentioned have a common ultimate goal — to nullify the award of the sale and lease of the properties of the Province to ALI by assailing the bidding dated July 7, 2011.

SMPHI filed a motion for reconsideration of the Resolution dated March 3, 2017,[21] but the RTC Branch 48 denied it in a Resolution[22] dated July 26, 2017.

Hence, this petition.

The sole issue to be resolved by the Court is whether SMPHI committed forum shopping warranting the dismissal of its complaint before the RTC Branch 48. The issue being a pure question of law, direct appeal to this Court *via* Rule 45 is proper pursuant to Section 2 (c) of Rule 41 which states:

SEC. 2. *Modes of appeal*. —

x x x x

(c) Appeal by *certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

The Court's Ruling

The petition lacks merit.

Forum shopping consists in the act of a party against whom an adverse judgment has been rendered in one forum, of seeking

---

[19] *Id*. at 454-457.

[20] *Id*. at 42-47.

[21] *Id*. at 52-61.

[22] *Id*. at 48-51.

another, and possibly favorable, opinion in another forum (other than by appeal or by special civil action of *certiorari*), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[23]

The rationale for the rule against forum shopping is as follows:

> It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.[24]

Is there forum shopping in the instant case? The answer must be in the affirmative. To shed light on this finding, the Court deems it proper to trace a bit of the history surrounding the controversy, and demonstrate the presence of forum shopping in the case at bar.

Records show that after the issuance of Resolution No. 11-001 on July 13, 2011, SMPHI filed a Petition[25] for *Certiorari* under Rule 65 of the Rules of Court, with an application for issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), docketed as SCA Case No. 11-13803 against Gov. Marañon and members of the Committee before the RTC Branch 50, Bacolod City. The issue in that case was whether the issuance of Resolution No. 11-001 declaring the second bidding held on July 7, 2011 and the resort to

---

[23] *PNB-Republic Bank v. Court of Appeals*, 373 Phil. 102, 106 (1999). Citations omitted.

[24] *Zamora v. Quinan, et al.*, 821 Phil. 1009, 1016 (2017), citing *Toprate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003).

[25] *Rollo*, pp. 197-218.

negotiation for the sale and lease of the Province's properties was tainted with grave abuse of discretion. SMPHI sought to nullify Resolution No. 11-001 and be declared as the winning bidder. On its request for a TRO, SMPHI sought to restrain respondents from proceeding with the submission of bid proposals that was scheduled on July 15, 2011. However, the RTC Branch 50 denied the application for a TRO in an Order dated July 14, 2011. SMPHI's petition was later amended[26] to include as respondents the members of the *Sangguniang Panlalawigan*.

During the pendency of SCA Case No. 11-13803, SMPHI filed before the Court of Appeals (CA) a petition for *certiorari* with application for a TRO and/or WPI docketed as CA-G.R. SP No. 06084 assailing the Order dated July 14, 2011 of the RTC Branch 50 which denied its application for a TRO. On September 6, 2011, the CA denied SMPHI's prayer for WPI.[27] SMPHI moved for reconsideration, but the CA denied it in a Decision[28] dated February 16, 2012, the *fallo* of which reads:

> WHEREFORE, finding no basis to reverse, modify, amend or set aside our Resolution dated September 6, 2011, petitioner's Motion for reconsideration, is DENIED. In the same wise, finding no merit in the Petition seeking to nullify the Order dated July 14, 2011 of the Regional Trial Court, Branch 50, Bacolod City, in Civil Case No. 11-13803, the Petition is DISMISSED. Costs against petitioner.
>
> SO ORDERED.[29]

Meanwhile, after trial in due course in SCA Case No. 11-13803, RTC Branch 50 rendered a Decision[30] dated January

---

[26] *Id*. at 221-246.

[27] *Id*. at 757; per Court of Appeals, Cebu City, Special Nineteenth Division Decison dated February 16, 2012.

[28] *Id*. at 753-763; penned ty Associate Justice Victoria Isabel A. Paredes with Associate Justices Ramon Paul L. Hernando (now a member of the Court) and Nina G. Antonio Valenzuela, concurring.

[29] *Id*. at 762.

[30] *Id*. at 664-685; penned by Judge Estefanio S. Libutan, Jr.

23, 2014 denying SMPHI's petition for lack of merit. It found no grave abuse of discretion in the issuance of Resolution No. 11-001.

The RTC Branch 50 exhaustively discussed as follows:

> Respondent Committee's decision to declare a failure of the July 27, 2011 public bidding a failure is not without any basis. Section 178 of COA Circular No. 92-386 which prescribes the rules and regulations on supply and property management in the local governments, including the disposal of supplies and property, expressly provides, that:
>
> > "SEC. 178. Basis of Award. — Award shall be given to the highest complying bidder, provided the offer is not less than the appraised value of the property being sold."
>
> Considering that the offers of both petitioner and Ayala were both below the appraised value of P19,500.00 fixed by respondent Committee, the latter deemed it proper and necessary not to give the award to the petitioner despite being the highest bidder, pursuant to the above-quoted circular, otherwise, the members of respondent Committee would have been liable for violating the same. Since no award could be made to any of the two bidders, consequently, respondent Committee has to declare a failure of bidding.
>
> x x x x
>
> Petitioner insists that it should be declared the winning bidder since there was no failure of the July 7, 2011 public bidding and it offered a bid higher than that of Ayala. Petitioner cited COA Circular No. 88-296 which provides that there is a failure of bidding in any of the following instances: (a) if there is only one offeror; or (b) if all the offers/tenders are non-complying or unacceptable. According to the petitioner, since there was more than one bidder and it offered the highest bid which was acceptable, respondent Committee gravely abused its discretion in declaring the July 7, 2011 public bidding. Petitioner explained that while its bid of P18,888.00 is below the floor price of P19,500.00 fixed by respondent Committee, the difference of P612.00 is not excessive because it represents only 3% of the floor price, and since the difference is not excessive, respondent Committee should have accepted petitioner's winning bid because according to the petitioner, under COA Memorandum Nos. 91-712 and 88-659 "if the difference is found not excessive the sale may be allowed in audit."

It is true that there was more than one bidder, yet the offers of the two bidders are unacceptable to respondent Committee because they were both below the floor price of P19,500.00 which the Committee fixed pursuant to its mandate. Since the offers of both the petitioner and Ayala are unacceptable, then, based on COA Circular No. 88-296, the July 27, 2011 public bidding is a failure. Even if petitioner offered the highest bid it did not vest on said petitioner the right to be declared the winning bidder in light of the express reservation in the Offer to Sell or Lease, which states that:

> "The Provincial Government reserves the right to reject any or all bids, to waive any informalities therein or to accept only such bid as may be considered most advantageous to the government." x x x

It is well settled that where such reservation is made in the an Invitation to Bid, the highest or lowest bidder, as the case may be, is not entitled to an award as a matter of right (*C&C Commercial Corp. v. Menor*, L-28360, 27 January 1983, 120 SCRA 112, cited in the case of *J.G. Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, September 24, 2003). Even the lowest bid or any bid may be rejected or, in the exercise of sound discretion, the award may be made to another than the lowest bidder x x x.[31]

The RTC Branch 50 observed that SMPHI's contentions had already been passed upon by the COA in its Decision[32] dated September 21, 2012. The RTC Branch 50 noted the fact that the COA did not find any irregularity in the bidding conducted by the Province.

SMPHI appealed to the CA in a case docketed as CA-G.R. CEB-SP No. 08549. In its Decision[33] dated August 28, 2015, the CA adopted the findings of the RTC Branch 50. It appears that despite the issuance of an Entry of Judgment[34] in CA-G.R.

---

[31] *Id*. at 674-676.

[32] *Id*. at 249-266.

[33] *Id*. at 689-698; penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez, concurring.

[34] *Id*. at 705-706.

CEB-SP No. 08549, SMPHI still sought an appeal from the CA Decision to the Court via a Petition for Review on Certiorari (Pursuant to Rule 45 of the Rules of Court)[35] docketed as G.R. No. 224236.

At this juncture, the Court finds it necessary to quote portions of the COA Decision No. 2012-147[36] dated September 21, 2012 and the LRA Resolution[37] dated March 17, 2014 in Consulta No. 5337 which respondents and the RTC Branch 50 all have mentioned, and repeatedly appear in the records of this case.

The subject matter in the COA Decision No. 2012-147 is the request for approval of the Deed of Conditional Sale and Contract of Lease between the Province and ALI. In its Decision, the COA exhaustively discussed as follows:

> x x x Likewise, Section 180 of Rule 24 of COA Circular No. 92-386 dated October 20, 1992 provides that: "When public auction is impracticable, negotiated sale may be resorted to at such price as determined by the Committee on Awards." In this case, there was a failure of two (2) consecutive public biddings which legally justified the resolution of the PGNO to proceed to a negotiated sale.
>
> The selling price of P19,500.00 per square meter of the property is based on the evaluation and appraisal of the PGNO which was found reasonable by the TIS, COA RO No. VI. In the Appraisal/ Valuation Report dated April 11, 2012 of a team created under COA Office Order No. 2012-151 dated March 20, 2012 to conduct re-inspection/re-appraisal for the price reasonableness of the Properties subject of this case, the same was also appraised, using the Income Capitalization Approach, at P19,500.00 per square meter, which in the team's opinion is just, fair and reasonable. The offer of ALI during the Negotiated Sale was P20,500.00 per square meter which is higher than the appraised value of P19,500.00.

SMPHI contends that it should have been declared the winner although its Bid was below the floor price, considering that: 1) the

---

[35] *Id*. at 91-131.

[36] *Id*. at 249-266.

[37] *Id*. at 483-487; penned by Administrator Eulalio C. Diaz III.

difference of its bid with the floor price is within the allowable variance; 2) its bid is much higher than that of the bid of ALI; and 3) there is non-disclosure of the floor price by the Committee on Awards and Disposal and it was only announced after the Bid was tendered.

This Commission does not find merit in such contentions. SMPHI's first and second contentions are referring to the second auction when it avers that its bid is higher than ALI's and the difference of its bid price with the floor price is within the 10% allowable variance. But such second auction was declared a failure since both its and ALI's bids were lower than the floor price in line with Section 178 of COA Circular No. 92-386 deriving authority from Section 383 of the LGC which provides "[A]ward shall be given to the highest complying bidder, provided the offer is not less than the appraised value of the property being sold" x x x. Since the bid offer of SMPHI is lower than the appraised value rendered by the PGNO's Committee on Awards and Disposal, the declaration is in order. As to the SMPHI's contention that it should be declared as the winning bidder because its bid offer is within the 10% variance of the appraised value rendered by the PGNO's Committee on Awards and Disposal is unmeritorious because the 10% variance is not allowed in the determination by the said Committee for the highest and complying bidder. The 10% variance is for the exclusive use by the concerned Auditor and the COA Commission Proper in determining as to the reasonableness of the price of the item purchased/disposed x x x.

As to the third ground relied upon by SMPHI, there is no law or rule that requires the disclosure of the floor price prior to the conduct of a bidding. The announcement of the floor price is dependent upon the assessment of the Committee on Awards and Disposal based on the beneficial effect to the PGNO. In this case, the Committee on Awards and Disposal opted not to disclose the floor price earlier than the scheduled bidding as its strategy to come up with a competitive and advantageous offer. All the bidders did not know of the floor price, not until after the bid was tendered. Thus, there was no prejudiced party despite the lack of knowledge of the floor price. Moreover, there was no bidder that raised the issue before and during the bidding process. It is only SMPHI who raised the issue after the 2nd bidding on July 7, 2011 was declared a failure.[38] (Underscoring omitted.)

---

[38] *Id*. at 261-262.

The Court observes that the above pronouncements by the COA were given merit and relied upon by the RTC Branch 50 in its Decision dated January 23, 2014.

With respect to the LRA Resolution dated March 17, 2014 in Consulta No. 5337, while SCA Case No. 11-13803 was pending before the RTC Branch 50, SMPHI filed a Notice of *Lis Pendens* dated March 21, 2012 before the Register of Deeds (RD) of Bacolod City involving the properties of the Province.[39] On March 26, 2012, the RD denied the registration of the Notice of *Lis Pendens* on the ground that SCA Case No. 11-13803 is a special civil action and does not fall within the coverage of Section 76[40] of Presidential Decree No. 1529 otherwise known as the "Property Registration Decree." No appeal was made from the denial.

On May 11, 2012, SMPHI, through Atty. Edgar Ryan San Juan, filed an Affidavit of Adverse Claim which was the subject matter in Consulta No. 5337. It was a consequence of the denial of SMPHI's Notice of *Lis Pendens*. In the Resolution[41] dated March 17, 2014, the LRA held that the Affidavit of Adverse Claim is not registrable. It noted that the Affidavit of Adverse Claim is grounded on SMPHI's belief that it was the winning

---

[39] *Id*. at 485, per the LRA Resolution dated March 17, 2014 in Consulta No. 5337.

[40] Section 76 of Presidential Decree No. 1529 provides:

Section 76. *Notice of Lis Pendens*. — No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

[41] *Rollo*, pp. 483-487.

bidder and has the sole and exclusive right to purchase or lease the properties from the Province. It held as follows:

> x x x *An adverse claim anchored on a mere "good reasons to believe" that a losing bidder is the winning bidder in the public auction and therefore has the sole and exclusive right to purchase or lease the property subject of a bidding is not a claim on the title, but at best an assailment of the bid proceeding*. It has nothing to do with the title itself which can be considered as an adverse claim with the registered owner. To qualify as an adverse claim, the claimant must at least present some documents that would show his interest or claim on the title itself. In this case, none has been presented except a self-serving allegation in the affidavit of adverse claim.
>
> In short and simple language, Petitioner's claim is not adverse to the registered owner neither against the title nor the property but towards the bid proceeding.[42] (Italics supplied.)

The LRA thereby sustained the RD's denial of registration. The LRA Resolution has attained finality per Certificate of Finality[43] dated September 22, 2016.

The foregoing discussion indubitably shows that SMPHI committed forum shopping.

In all the proceedings mentioned above, SMPHI is asking for essentially the same relief — to be declared as the winning bidder in the bidding dated July 7, 2011. Notably, the main relief being asked by SMPHI in SCA Case No. 11-13803, CA-G.R. CEB-SP No. 06084, even in the COA Decision dated September 21, 2012, and the LRA Resolution dated March 17, 2014 is founded on the same incidents.

SMPHI's prayer before the RTC Branch 48, that is, to have the Deed of Conditional Sale and Contract of Lease nullified, is essentially an attack at the validity of the bidding dated July 7, 2011 and the Resolution No. 11-001. However, their validity has already been upheld by the RTC Branch 50 and CA. As aforesaid, per records, there is already an Entry of Judgment

---

[42] *Id*. at 486-487.

[43] *Id*. at 489.

in the CA's Decision in CA-G.R. CEB-SP No. 08549, which affirmed the RTC Branch 50.

Furthermore, as illustrated above, the cases before the RTC Branch 48 and RTC Branch 50 involve the same essential facts and circumstances. There is an identity of parties who represent the same interests in both actions. Also, the two actions essentially touch on the same core issues. The actions likewise raise identical cause of actions.

"Cause of action" is the act or omission by which a party violates the right of another.[44] It may be argued that the cause of action in the RTC Branch 48 was the execution of the Deed of Conditional Sale and Contract of Lease between the Province and ALI, while in SCA Case No. 11-13803 it was the issuance of Resolution No. 11-001. However, identity of causes of action does not mean absolute identity.[45] One way to determine whether the causes of action are identical is to ascertain whether there is an identity of the facts essential to the maintenance of the two actions.[46] If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case would be a bar to the subsequent action.[47] "*Hence, a party cannot, by varying the form of action or adopting a different method of presenting the case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies.*"[48]

There is a clear violation of the rules on forum shopping as SMPHI approached two different fora asking to grant substantially the same reliefs on the supposition that one or the other court would make a favorable disposition. SMPHI's

---

[44] *Eulogio, et al. v. Bell, et al.*, 763 Phil. 266, 280 (2015), citing Section 2, Rule 2 of the Rules of Court.

[45] *Id*.

[46] *Id*.

[47] *Id*.

[48] *Id*., citing *Yap v. Chua, et al.*, 687 Phil. 392, 401 (2012).

act created the possibility of conflicting decisions being rendered by the different fora upon the same issues.

Forum shopping is a malpractice that is proscribed as it trifles with the courts and abuses their processes.[49] Forum shopping is an improper conduct that degrades the administration of justice. This practice cannot be tolerated and should be condemned.

WHEREFORE, the petition is **DENIED**. The Resolutions dated March 3, 2017 and July 26, 2017 of Branch 48, Regional Trial Court, Bacolod City in Civil Case No. 14-14323 are **AFFIRMED**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo,*[*] *Gaerlan,*[**] and *Rosario, JJ.*, concur.

---

[49] *Lokin, Jr. v. COMELEC, et al.*, 635 Phil. 372, 390 (2010).

[*] Designated additional Member per Raffle dated June 22, 2020.

[**] Designated additional Member per Raffle dated November 11, 2020.

FIRST DIVISION

[G.R. No. 233846. November 18, 2020]

SPOUSES NESTOR CABASAL and MA. BELEN CABASAL, *Petitioners, v.* **BPI FAMILY SAVINGS BANK, INC. and ALMA DE LEON,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; WRIT OF POSSESSION; ONCE TITLE TO THE PROPERTY HAS BEEN CONSOLIDATED WITH THE BUYER UPON THE FAILURE OF THE MORTGAGOR TO REDEEM THE PROPERTY WITHIN THE ONE-YEAR REDEMPTION PERIOD, THE ISSUANCE OF A WRIT OF POSSESSION BECOMES A MATTER OF RIGHT BELONGING TO THE BUYER AND A MINISTERIAL FUNCTION OF THE COURT.— It has long been settled that once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at any time. Its right of possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.

. . .

Not even any question regarding the validity of the mortgage or its foreclosure is a legal ground for refusing the issuance of a writ of execution/writ of possession.

2. ID.; ID.; ID.; ID.; AN *EX-PARTE* PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS A NON-LITIGIOUS PROCEEDING FOR THE ENFORCEMENT OF ONE'S RIGHT OF POSSESSION AS PURCHASER IN A FORECLOSURE SALE.— It is thus befuddling that the

proceeding for the issuance of writ of possession was even consolidated with Civil Case No. 01-0014. To be sure, no hearing is necessary prior to the issuance of a writ of possession, as it is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. By its very nature, an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.

3. CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF ABUSE OF RIGHTS; TORTS; WHETHER THE PRINCIPLE OF ABUSE OF RIGHTS HAS BEEN VIOLATED RESULTING TO DAMAGES UNDER ARTICLE 20 OR OTHER APPLICABLE PROVISIONS OF LAW DEPENDS ON THE CIRCUMSTANCES OF EACH CASE.— The principle of abuse of rights, as enshrined in Article 19 of the Civil Code, provides that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. In *Arco Pulp and Paper, Inc. v. Dan T. Lim*, the Court emphasized that Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21.

Whether the principle of abuse of rights has been violated resulting in damages under Article 20 or other applicable provision of law depends on the circumstances of each case. Article 20 covers violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. "Willful" may refer to the intention to do the act and the desire to achieve the outcome that the plaintiff in tort action considers as injurious. "Negligence" may refer to a situation where the act was consciously done but without intending the injurious result. Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there

was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.

4. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; BAD FAITH; BAD FAITH SHOULD BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, SINCE THE LAW ALWAYS PRESUMES GOOD FAITH.— Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.

The settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith. Bad faith, like fraud, is never presumed since it is a serious accusation that can be so conveniently and casually invoked. Hence, for anyone who claims that someone is in bad faith, the former has the duty to convincingly prove the existence of the same.

5. ID.; ID.; ID.; ID.; ID.; THE FAILURE OF AN EMPLOYEE TO EXTEND ASSISTANCE OR TO DIRECT A CLIENT TO THE PROPER DIVISION OR OFFICE IS NOT TANTAMOUNT TO NEGLIGENCE OR BAD FAITH THAT WOULD MAKE THE EMPLOYER VICARIOUSLY LIABLE.— After a perusal of the facts and evidence on hand, the Court holds that contrary to the RTC's findings, petitioners failed to prove that respondent and BPI acted in bad faith or negligence so as to be liable under Article 20 and 21 of the New Civil Code.

. . .

. . . [P]etitioners cannot also fault respondent for not being able to direct them to the proper loan division of BPI. Respondent was under no obligation to do that. She could have done so as a courtesy to Nestor, the latter being a client of BPI, but her failure to extend such assistance at that time is not tantamount

to negligence or bad faith on her part, much less be the proximate cause why the transaction between Nestor and Eloisa failed to materialize. Nestor, being an engineer and a businessman of experience, should have known what to do under the circumstances and where to go after, considering that he already had a previous real estate transaction presented to BPI for loan approval. And even assuming for the nonce that he did not know specific BPI division or office to inquire from, he should have exerted earnest effort to obtain such information from other BPI employees, not necessarily from respondent.

Verily, a responsible and diligent businessman would go to great lengths to ensure the consummation of any transaction. Under the circumstances, however, Nestor clearly failed in this respect. He should thus not be allowed to pass the blame to other people for his shortcomings. And since respondent cannot be considered to have acted negligently or in bad faith, BPI is not vicariously liable.

6. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; BARE ALLEGATIONS, UNSUBSTANTIATED BY EVIDENCE, ARE NOT EQUIVALENT TO PROOF.— [I]t cannot even be established from petitioners' evidence whether Eloisa backed out of the agreement because of the very words spoken by respondent. Eloisa was not presented in court; hence, petitioners' asseveration is merely self-serving, unsubstantiated, and conjectural. It is a fundamental rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Charges based on mere suspicion and speculation cannot be given credence. When the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit.

APPEARANCES OF COUNSEL

Tec Rodriguez Law Office for petitioners.

BPI Legal Affairs & Dispute Resolution Division for respondents.

D E C I S I O N

ZALAMEDA, *J.*:

Morality and ethics enjoin everyone to observe the unwritten rule that "one's right ends where others' begin." In a civilized and peaceful society, an abuse of one's right is eschewed. Statutorily, however, Article 19 of the New Civil Code, known to contain what is commonly referred to as the principle of abuse of rights, is not a panacea for all human hurts and social grievances.[1] To warrant reliefs from the courts, the act complained of must be shown to be done in bad faith or with intent to injure.

The Case

This petition for review[2] under Rule 45 of the Rules of Court, seeks to reverse and set aside the Decision[3] dated 15 February 2017 and Resolution[4] dated 05 September 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 98642. The CA reversed the Decision[5] dated 01 December 2011 of Branch 274, Regional Trial Court (RTC) of Parañaque City, in the consolidated cases for Damages with Annulment of Extra-Judicial Foreclosure of Transfer Certificate of Title (TCT) No. (35660) 141767 and Injunction and *Ex-Parte* Proceedings for the Issuance of a Writ of Possession, docketed as Civil Case No. 01-0014 and Land Registration Case No. 02-0068, respectively.

---

[1] See *Mata v. Agravante*, G.R. No. 147597, 06 August 2008, 583 Phil. 64 (2008).

[2] *Rollo*, pp. 12-57.

[3] *Id.* at 62; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Florito S. Macalino of the Court of Appeals, Manila.

[4] *Id.* at 101-102.

[5] *Id.* at 354-368, Annex "EEEE".; penned by Presiding Judge Fortunito L. Madrona.

Antecedents

Petitioners spouses Nestor Cabasal (Nestor) and Ma. Belen Cabasal (Belen) (collectively, petitioners) were granted by BPI Family Savings Bank (BPI) a credit line for their build and sell business. Sometime in 1997, petitioners purchased two (2) real properties with improvements using said credit line as source of payment. Consequently, petitioners executed (2) Mortgage Loan Agreements[6] in favor of BPI under the following loan accounts: 1) Account No. 0211112476 for Php5,000,000.00; and 2) Account No. 0211291311 for Php3,360,000.00.[7]

While looking for prospective buyers for the properties, petitioners religiously paid their amortizations. However, it took them three (3) years to find a willing buyer in the person of Eloisa Guevarra Co (Eloisa) who agreed to buy their properties by way of sale with assumption of mortgage. Accordingly, the parties prepared a Deed of Sale with Assumption of Mortgage.[8] Eloisa undertook to give a down payment of Php7,850,000.00, and assume the balance of petitioners with BPI in the amount of Php4,462,226.00.[9] At that time, petitioners' accounts with BPI were already past due. Hence, Nestor asked for an updated statement of account from respondent Alma De Leon (respondent).

On 6 July 2000, Nestor and Eloisa went to BPI to obtain a copy of petitioners' statement of account, and to effectuate the transfer of mortgage to Eloisa. However, respondent informed them that their transfer agreement would not be recognized by BPI since Eloisa was not a client of the bank. Nestor pleaded with respondent to accommodate Eloisa, citing a similar transaction he had in the past, which was authorized by BPI.

---

[6] *Id.* at 212-215.

[7] *Id.* at 63 and 354-355.

[8] *Id.* at 126-129.

[9] *Id.* at 63 and 355.

Respondent, however, insisted that the transaction was not allowed by BPI, being in the form of assumption of mortgage.[10]

Petitioners claimed that Eloisa was a sure buyer, given that she already had three (3) air conditioning units delivered to the properties.[11] However, their deal with her fell through because of respondent's irresponsible handling on the incident. Petitioners assert that they failed to realize an expected profit of Php3,387,773.96. Consequently, Nestor sent a letter[12] of complaint dated 27 July 2000 to BPI. His lawyer likewise sent a letter[13] dated 08 December 2000, informing BPI that petitioners would not pay their amortization due to the grossly negligent act of respondent. In addition, petitioners requested the waiver of all interests and charges on their loan.[14] He did not receive any response from BPI.

Meanwhile, petitioners continued to default on their loan obligation under Account No. 0211291311, eventually leading to the foreclosure of the mortgage by BPI. The subject property was then sold at public auction, where BPI was declared the highest bidder.[15]

Consequently, petitioners instituted Civil Case No. 01-0014, for Damages with Annulment of Extra-Judicial Foreclosure of TCT No. (35660) 141767 and Injunction, against respondent and BPI.[16] Later, BPI filed Land Registration Case No. 02-0068, an *Ex-Parte* Petition for the Issuance of Writ of Possession.[17]

---

[10] *Id.* at 63-64 and 355.

[11] *Id.* at 64.

[12] *Id.* at 232-233.

[13] *Id.* at 234.

[14] *Id.*

[15] *Id.* at 357-358.

[16] *Id.* at 66; *see* also Complaint, *id.* at 111-119, Annex "F".

[17] *Id.* at 66 and 363-364; see also Judicial Affidavit of Lilie C. Ultu, *id.*, 310-317.

It was ordered consolidated with Civil Case No. 01-0014 upon motion of petitioners.[18]

During trial on the merits, respondent and BPI denied petitioners' allegations.

Respondent averred that on 05 July 2000, she talked to Nestor over the phone, and he requested for a statement of account for his overdue loan accounts. Nestor also informed her about the impending sale of his property to Eloisa, the proceeds of which would be used to pay off his loan. Respondent dissuaded him from doing so, explaining that this type of agreement was against the bank's policy and Section 35 of the Mortgage Loan Agreement. She also told Nestor that she would not entertain any query from his buyer.[19] Nestor was nevertheless adamant, and brought Eloisa to their office the following day. She gave Nestor a copy of the statement of account, but refused to talk to Eloisa.[20] When Nestor pleaded, she relented. Respondent similarly informed Eloisa that the agreement between her and Nestor would not get BPI's approval. In the vernacular, she said, *"kung tutuusin po kasi para pong illegal itong ginagawa niyo dahil against po sa bank policy, yong loan po nakapangalan pa kay Mr. Cabasal so hindi po namin talaga kayo irerecognize as client."*[21] Respondent claimed that her statement was uttered in good faith and with reference only to Section 35 of the loan agreement signed by petitioners.[22] She maintained that BPI prohibits an assumption of mortgage, and recommended that the interested buyer should instead take out a separate loan to extinguish the obligation of the first borrower.[23]

In addition, BPI clarified that the previous sale transaction of petitioners was allowed by BPI only because petitioners'

---

[18] *Id.* at 23.

[19] *Id.* at 362.

[20] *Id.* at 65 and 362.

[21] *Id.* at 362.

[22] *Id.* at 362-363.

[23] *Id.* at 363.

buyer did not assume the mortgage. Instead, the buyer took out a personal loan with BPI which he then used to pay off petitioners' loan, and thus cleared the latter's account. In the present transaction, however, Nestor wanted Eloisa to assume their mortgage liabilities, which BPI prohibits to prevent third parties, who are not qualified for a loan, from incurring a financial obligation to BPI.[24]

Finally, BPI claimed that because petitioners' loan account remained delinquent despite several demands, it instituted a petition for extra-judicial foreclosure of real estate mortgage. Consequently, the sheriff prepared a notice of sheriff's sale, and caused the posting and publication of the same. The public auction transpired on 27 September 2000, with BPI emerging as the highest bidder. Subsequently, the sheriff issued to BPI a certificate of sale, which the latter registered. For failure of petitioners to redeem the property within the redemption period, BPI executed an Affidavit of Consolidation of Ownership, leading to the issuance of a new certificate of title in its name, in lieu of petitioners' certificate of title. BPI then demanded the petitioners to vacate the property, but they refused. Hence, BPI filed an *ex-parte* petition for issuance of writ of possession.[25]

Ruling of the RTC

On 01 December 2011, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, all the foregoing duly considered, judgment is hereby rendered as follows:

(1) For Civil Case No. 01-0014, partly in favor of the plaintiffs, ordering the defendants to jointly and severally pay the plaintiffs the sum of P3,387,773.96 with legal interest of 12% per annum until fully paid; the sum of P100,000.00 and P2,000.00 per court appearance and for attorney's fees; the sum of P200,000.00 as moral damage; the sum of P100,000.00 as exemplary damage; and cost of suit;

---

[24] *Id.* at 66 and 363.

[25] *Id.* at 357-358 and 363-364.

(2) For Land Registration Case No. 02-0068, in favor of defendant bank, allowing the issuance of writ of possession for the lot covered by Transfer Certificate of Title No. 150985, formerly Transfer Certificate of Title No. 141767.

SO ORDERED.[26]

The RTC dismissed the case for annulment of extra-judicial foreclosure of mortgage, and granted the application for the issuance of a writ of possession. It found the mortgage to be in order, and the foreclosure proceedings to have duly complied with all the requisites of the law.[27]

Nonetheless, the RTC found respondent and BPI liable to petitioners for damages on account of their bad faith. According to the RTC, respondent violated Articles 19 and 20 of the New Civil Code because she failed to exercise good faith and honesty in dealing with Nestor and Eloisa. She blatantly and thoughtlessly branded the transaction between Nestor and Eloisa illegal even if the same was not yet consummated, and though she was aware that another office or division — not the collection department to which she belonged — was better equipped to handle matters relating to assumption of mortgages. The RTC opined that what respondent should have done was to help a valued client by referring him to the appropriate office.[28]

For respondent's acts, the RTC found BPI equally liable for damages, in accordance with Article 2180 of the New Civil Code.[29] The RTC ascribed fault on BPI for failing to prove that it exercised diligence in the selection and supervision of its employees like respondent.

Finally, the RTC held that neither respondent nor BPI can claim good faith as paragraph 35 of the Mortgage Loan Agreement was a circumvention of Article 2130 of the Civil Code. In support thereof, the RTC cited *Litonjua v. L&R*

---

[26] *Id.* at 368.

[27] *Id.* at 367-368.

[28] *Id.* at 365-367.

[29] *Id.* at 367.

Corporation,[30] where the Court held that a stipulation forbidding the owner from alienating the immovable mortgage shall be void.[31]

Both parties appealed the decision. Whereas petitioners filed a Notice of Partial Appeal[32] against the RTC's ruling in Land Registration Case No. 02-0068, respondent and BPI assailed the RTC's judgment in Civil Case No. 01-0014.[33]

Ruling of the CA

In the now assailed Decision, the CA affirmed the RTC's ruling in Land Registration Case No. 02-0068, but reversed the RTC's decision in Civil Case No. 01-0014. The decretal portion of said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> (1.) For Civil Case No. 01-0014, the *Appeal* filed by appellants BPI and De Leon is **GRANTED**. The appealed *Decision* dated December 1, 2011 of the RTC, Branch 274 of Parañaque City awarding damages and attorney's fees to spouses Cabasal is **REVERSED** and **SET ASIDE**. Accordingly, spouses Cabasal's Complaint for Damages docketed as Civil Case No. 01-0014 is **DISMISSED** for lack of merit.
>
> (2) For Land Registration Case No. 02-0068, the Appeal filed by appellants spouses Cabasal is **DISMISSED**. The appealed Decision dated December 1, 2011 of the RTC, Branch 274 of Parañaque City is **AFFIRMED**.
>
> SO ORDERED.

Anent Land Registration Case No. 02-0068, the CA agreed that the writ of possession should issue as a matter of course in view of the established facts.[34]

---

[30] G.R. No. 130722, 09 December 1999, 378 Phil. 145 (1999); 320 SCRA 405 [Per J. Ynares-Santiago].

[31] *Rollo*, p. 367.

[32] *Id.* at 369-373, Annex "FFFF".

[33] *Id.* at 67.

[34] *Id.* at 76-78.

With respect to Civil Case No. 01-0014, the CA emphasized that the absence of good faith is essential to abuse of right under Article 19 of the New Civil Code. In this case, however, respondent's utterances cannot be equated to bad faith, as she adequately explained that the transaction between Nestor and Eloisa violated paragraph 35 of the Mortgage Loan Agreement.[35] While respondent admitted that she was not competent to ultimately rule on the matter, being merely a collection assistant, her statement was based on BPI's policy proscribing such arrangement.[36]

Finally, the CA held that although BPI's policy may appear to be unreasonably restrictive to some, the same cannot be characterized as suffused with bad faith.[37] On the contrary, BPI acted appropriately in keeping with its duty as a banking institution to exercise extra-ordinary care and prudence. The stipulation was in strict adherence of its own rules, which petitioners, as borrowers, may freely accept or reject.[38]

Petitioners filed a Motion for Reconsideration,[39] but the same was denied. Hence, they filed the present petition, submitting the following grounds for the allowance thereof:

A. THE INSTANT PETITION FOR REVIEW UNDER RULE 45 OF THE 1997 RULES OF CIVIL PROCEDURE CAN BE TAKEN COGNIZANCE BY THIS HONORABLE COURT DUE TO THE FINDINGS OF THE HONORABLE COURT OF APPEALS BEING CONTRARY TO THAT OF THE HONORABLE TRIAL COURT

B. THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE HONORABLE TRIAL COURT'S AWARD OF DAMAGES TO PETITIONERS IN THE INSTANT CASE, BY FAILING TO APPLY ARTICLE 20

---

[35] *Id.* at 72.

[36] *Id.* at 73.

[37] *Id.* at 74.

[38] *Id.*

[39] *Id.* at 80-99.

OF THE CIVIL CODE TO THE DULY PROVEN NEGLIGENCE COMMITTED BY RESPONDENT ALMA DE LEON WHICH RESPONDENT BANK IS VICARIOUSLY LIABLE *[SIC]*

C. THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE HONORABLE TRIAL COURT'S GRANTING OF THE SUBJECT WRIT OF POSSESSION CONSIDERING THAT RESPONDENTS COMMITTED BREACH OF CONTRACT WHICH GIVES PETITIONERS THE RIGHT TO SUSPEND PAYMENT OF THEIR MORTGAGE LOAN UNDER ARTICLES 1169 AND 1191 OF THE CIVIL CODE THEREBY MAKING THE FORECLOSURE OF THE [PARAÑAQUE] PROPERTY VOID[40]

Ruling of the Court

The petition lacks merit.

Prefatorily, it should be pointed out that the present petition conspicuously contains the same factual issues and arguments already fully passed upon by the CA. As a rule, questions of fact, which would require a re-evaluation of the evidence, are inappropriate for a Rule 45 petition. Under Section 1 of Rule 45, the Court's jurisdiction is limited only to errors of law since it is not a trier of facts.[41] Although jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated, and proved by the parties so this court may evaluate and review the facts of the case. In any event, even in such cases, this court retains full discretion on whether to review the factual findings of the Court of Appeals.[42]

In the instant case, the RTC and the CA were unanimous that based on the established facts, BPI is entitled to a writ of

---

[40] *Id.* at 31-32.

[41] *See Gatan v. Vinarao*, G.R. No. 205912, 18 October 2017, 842 SCRA 602, 609 [Per J. Leonardo-de Castro].

[42] *See Pascual v. Burgos*, G.R. No. 171722, 11 January 2016, 776 Phil. 167-191 (2016); 778 SCRA 189, 191 [Per J. Leonen].

possession. However, they differed on their findings as to the liability of respondent and BPI under the circumstances.

The Court sustains the CA's decision.

It has long been settled that once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at any time. Its right of possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.[43]

It is thus befuddling that the proceeding for the issuance of writ of possession was even consolidated with Civil Case No. 01-0014. To be sure, no hearing is necessary prior to the issuance of a writ of possession, as it is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.[44] By its very nature, an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.[45]

Petitioners contend that because of the negligent act of respondent, BPI must be considered guilty of breaching its

---

[43] *See Nagtalon v. United Coconut Planters Bank*, G.R. No. 172504, 31 July 2013, 715 Phil. 595 (2013); 702 SCRA 615, 622 [Per J. Brion].

[44] *See LZK Holdings and Development Corporation v. Planters Development Bank*, G.R. No. 187973, 20 January 2014, 725 Phil. 83 (2014); 714 SCRA 294, 304 [Per J. Reyes]; *Espinoza v. United Overseas Bank Phils.*, G.R. No. 175380, 22 March 2010, 630 Phil. 342 (2010); 616 SCRA 353, 358 [Per J. Corona].

[45] *Id.*

obligation to observe the highest degree of diligence in the selection and supervision of their employees.[46] For such breach, petitioners additionally contend that they were justified to suspend payment; hence, they cannot be said to be in default of their obligation.

The argument deserves scant consideration.

Not even any question regarding the validity of the mortgage or its foreclosure is a legal ground for refusing the issuance of a writ of execution/writ of possession.[47] Furthermore, it should be pointed out that even prior to the incident, petitioners were already in default of their obligations to BPI, precisely why Nestor dealt with respondent, instead of other BPI employees.

In any case, the Court agrees with the CA that respondents and BPI are not liable in this case.

The principle of abuse of rights, as enshrined in Article 19 of the Civil Code, provides that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[48] In *Arco Pulp and Paper, Inc. v. Dan T. Lim*,[49] the Court emphasized that Article 19 is the general rule which governs the conduct of human relations. By itself, it is not the basis of an actionable tort. Article 19 describes the degree of care required so that an actionable tort may arise when it is alleged together with Article 20 or Article 21.

---

[46] *Rollo*, p. 47.

[47] *See Nagtalon v. United Coconut Planters Bank*, G.R. No. 172504, 31 July 2013, 715 Phil. 595 (2013); 702 SCRA 615, 626, [Per J. Brion] citing *Espinoza v. United Overseas Bank Phils.*, G.R. No. 175380, 22 March 2010, 630 Phil. 342 (2010); 616 SCRA 353, 357 [Per J. Corona].

[48] *Ardiente v. Spouses Pastorfide*, 714 Phil. 235 (2013); G.R. No. 161921, 17 July 2013, 701 SCRA 389, 399.

[49] G.R. No. 206806, 25 June 2014, 737 Phil. 133 (2014); 727 SCRA 275, 294 [Per J. Leonen], citing the Concurring opinion of Associate Justice Marvic Mario Victor F. Leonen in *Alano v. Logmao*, G.R. No. 175540, 07 April 2014, 720 SCRA 655, 693 [Per J. Peralta].

Whether the principle of abuse of rights has been violated resulting in damages under Article 20 or other applicable provision of law depends on the circumstances of each case.[50] Article 20 covers violations of existing law as basis for an injury. It allows recovery should the act have been willful or negligent. "Willful" may refer to the intention to do the act and the desire to achieve the outcome that the plaintiff in tort action considers as injurious. "Negligence" may refer to a situation where the act was consciously done but without intending the injurious result. Article 21, on the other hand, concerns injuries that may be caused by acts which are not necessarily proscribed by law. This article requires that the act be willful, that is, that there was an intention to do the act and a desire to achieve the outcome. In cases under Article 21, the legal issues revolve around whether such outcome should be considered a legal injury on the part of the plaintiff or whether the commission of the act was done in violation of the standards of care required in Article 19.[51]

After a perusal of the facts and evidence on hand, the Court holds that contrary to the RTC's findings, petitioners failed to prove that respondent and BPI acted in bad faith or negligence so as to be liable under Articles 20 and 21 of the New Civil Code.

Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements.[52]

The settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good

---

[50] *Alano v. Magud-Logmao*, G.R. No. 175540, 07 April 2014, 720 SCRA 655 [Per J. Peralta].

[51] *Supra* at note 48.

[52] *Adriano v. La Sala*, 719 Phil. 408 (2013); G.R. No. 197842, 09 October 2013, 707 SCRA 345, 358.

faith.[53] Bad faith, like fraud, is never presumed since it is a serious accusation that can be so conveniently and casually invoked.[54] Hence, for anyone who claims that someone is in bad faith, the former has the duty to convincingly prove the existence of the same.[55]

Like the CA, the Court sees no intention on the part of respondent to cause harm to the petitioners. She forewarned Nestor that the BPI would not acquiesce to the agreement between him and Eloisa because the bank does not allow assumption of mortgage. Despite that, Nestor insisted, and even brought Eloisa to her. Respondent may have been blunt in her response, but it was Nestor who prodded her to explain, even if she already told him that she would not entertain any queries from Eloisa.

Respondent's remark may have ultimately put Eloisa off only because it was not what she expected to hear. But it was not respondent's fault. It was Nestor who put her in that awkward position, and the latter answered only based on what she understood of the situation.

Further, it cannot even be established from petitioners' evidence whether Eloisa backed out of the agreement because of the very words spoken by respondent. Eloisa was not presented in court; hence, petitioners' asseveration is merely self-serving, unsubstantiated, and conjectural. It is a fundamental rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[56] Charges based on mere suspicion and speculation cannot be given credence. When the complainant relies on mere

---

[53] *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95 (2017); G.R. No. 211170, 03 July 2017, 828 SCRA 601, 610.

[54] *See Spouses Estrada v. Philippine Rabbit Bus Lines, Inc.*, G.R. No. 203902, 19 July 2017, 813 Phil. 950 (2017); 831 SCRA 349, 371 [Per J. Del Castillo].

[55] *Supra* at note 52.

[56] *See Morales, Jr. v. Ombudsman Morales*, G.R. No. 208086, 27 July 2016; 798 SCRA 609, 626 [Per J. Carpio].

conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit.[57]

It may be true that Eloisa was a willing buyer, and she actually bought another property afterwards. However, there can be a myriad of reasons which may have prompted her to cancel the deal with Nestor. Perhaps, it could have been because Eloisa could not be able to pay for petitioners' properties without a bank loan. Perhaps, too, Eloisa would not qualify for a bank loan; hence, she only agreed for an assumption of mortgage. It is also possible that she was poached by another seller or broker who gave her a better or more affordable deal. As petitioners' own evidence shows, Eloisa bought a different house and lot, also within Parañaque, for only Php3,800,000.00, which was evidently much lower than the purchase price for petitioners' properties, but within the amount she was willing to shell out as down payment therefor. What is more, Eloisa was able to conveniently purchase the property on installment basis, which did not require Eloisa to obtain a bank loan or assume any mortgage.[58]

Petitioners and the RTC are actually unreasonably passing the blame for the dissolution of the sale with Eloisa to respondent. As the CA aptly pointed out, respondent was only being honest and, in fact, right when she told Nestor and Eloisa that BPI would not permit their arrangement. If petitioners were bent on being able to sell their properties to Eloisa, they could have instead assisted her in taking out a loan in her own name, whether with BPI or a different bank. They did not. If, at all, it was petitioners who were negligent under the circumstances by insisting on a payment term which may have been favorable for them and their buyer, but was clearly not viable.

Similarly, petitioners cannot also fault respondent for not being able to direct them to the proper loan division of BPI.

---

[57] *Agdeppa v. Hon. Office of the Ombudsman*, G.R. No. 146376, 23 April 2014, 734 Phil. 1 (2014); 723 SCRA 293, 333 [Per J. Leonardo-de Castro].

[58] *Rollo*, pp. 226-227; *see* Acknowledgment Receipts dated 21 July 2000 and 26 September 2000.

Respondent was under no obligation to do that. She could have done so as a courtesy to Nestor, the latter being a client of BPI, but her failure to extend such assistance at that time is not tantamount to negligence or bad faith on her part, much less be the proximate cause why the transaction between Nestor and Eloisa failed to materialize. Nestor, being an engineer and a businessman of experience, should have known what to do under the circumstances and where to go after, considering that he already had a previous real estate transaction presented to BPI for loan approval. And even assuming for the nonce that he did not know specific BPI division or office to inquire from, he should have exerted earnest effort to obtain such information from other BPI employees, not necessarily from respondent.

Verily, a responsible and diligent businessman would go to great lengths to ensure the consummation of any transaction. Under the circumstances, however, Nestor clearly failed in this respect. He should thus not be allowed to pass the blame to other people for his shortcomings. And since respondent cannot be considered to have acted negligently or in bad faith, BPI is not vicariously liable.

WHEREFORE, all the foregoing considered, the instant Petition is hereby **DENIED**. Accordingly, the Decision dated 15 February 2017 and Resolution dated 05 September 2017 promulgated by the Court of Appeals in CA G.R. CV No. 98642 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Caguioa, and *Gaerlan, JJ.*, concur.

Carandang, J., on official leave.

FIRST DIVISION

[G.R. No. 238451. November 18, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ARMANDO PEDIDO *y* BELOERA,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS THEREOF.— To sustain a conviction for rape, the elements necessary are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, (b) when the victim is deprived of reason or otherwise unconscious, (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.

2. ID.; ID.; ID.; ELEMENT OF FORCE; FORCE MAY BE SUFFICIENTLY ESTABLISHED BY THE INJURIES THE VICTIM SUFFERED.— [T]he element of force was sufficiently established by the injuries AAA sustained. To emphasize, AAA sustained not only contusions and abrasions on her body, she also had profuse vaginal bleeding due to severe laceration of the vaginal wall and her anal orifice even sustained a hyperemia.

3. ID.; ID.; REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES THEREOF; IN THE ABSENCE OF EYEWITNESSES OR DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE MAY BE RESORTED TO.— It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. It becomes even more difficult when rape is committed and the victim could no longer testify, such as in this case where AAA died before her testimony could be presented in court.

However, the accused may still be proven as the perpetrator despite the absence of eyewitnesses. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to prove its case.

Circumstantial evidence is defined as "proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience." Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction. . . .

. . . [The] interwoven circumstances formed an unbroken chain clearly pointing to accused-appellant, and no other, as the man who forcefully had carnal knowledge of AAA.

4. ID.; ID.; ID.; ID.; FAILURE OF THE VICTIM TO DISCLOSE WHAT HAPPENED DOES NOT DISPROVE THE FACT OF RAPE.— That AAA said "*wala*" when asked about what happened to her does not disprove the fact of rape or absolve accused-appellant of guilt. Time and again the Court had ruled that there is no standard form of behavior among rape victims in the aftermath of their defilement, for people react differently to emotional stress. Some may shout, some may faint, while others may be shocked into insensibility. Yet many victims of rape never complain or file criminal charges against the rapists as they prefer to bear the ignominy and pain, rather than reveal their shame to the world.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; FLIGHT; FLIGHT IS AN INFERENCE OF GUILT IN THE ABSENCE OF A CREDIBLE EXPLANATION.— Interestingly, accused-appellant fled right after the incident and failed to refute the charge against him. Flight, in the absence of a credible explanation, would be a circumstance from which an inference of guilt might be established because a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.

6. CRIMINAL LAW; RAPE; PENALTY AND DAMAGES.— All the foregoing considered, the Court upholds accused-appellant's conviction and concur with the imposed penalty of *reclusion perpetua*, pursuant to paragraph 1 (a) of Article 266-A, in relation to Article 266-B of the Revised Penal Code, as amended. We likewise concur with the damages awarded as well as the imposition of six percent (6%) interest per *annum* on all damages awarded reckoned from the date of finality of this judgment until fully paid, pursuant to current jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

ZALAMEDA, *J.*:

This Appeal[1] assails the 29 November 2017 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02088 (CEBU), which affirmed the 25 May 2015 Judgment[3] of Branch 38, Regional Trial Court (RTC) of Dumaguete City in Criminal Case No. 2012-21508, finding accused-appellant Armando Pedido *y* Beloera (accused-appellant) guilty beyond reasonable doubt of rape.

Antecedents

Accused-appellant was indicted for rape in an Information alleging thus:

That on the night of, December 22, 2012, or at the early dawn of December 23, 2012 more or less, at [redacted], Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and with force, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one AAA,[4] an old maid, 76 years old, against the latter's will and consent to her damage and prejudice.

---

[1] *Rollo*, pp. 20-22; *see* Notice of Appeal dated 24 January 2018.

[2] Id. at 04-19; penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Edward B. Contreras of the Nineteenth Division, Court of Appeals, Cebu City.

[3] CA *rollo*, pp. 40-47; penned by Presiding Judge Cenon Voltaire B. Repollo.

[4] The identity of the victim or any information which could establish or compromise her identity, including the names of her immediate family or household members, and the *barangay* and town of the incident, are withheld pursuant to SC Amended Administrative Circular No. 83-2015.

Contrary to law.[5]

Accused-appellant pleaded not guilty to the charge.[6]

Version of the Prosecution

In the morning of 23 December 2012, BBB, AAA's nephew,[7] saw her outside her house. Since it was still early, he led AAA back inside. Upon entering, he saw blood on the floor,[8] prompting him to call another aunt, CCC,[9] who lived nearby. CCC checked around the house. Upon entering AAA's room, CCC saw a man, later identified as accused-appellant, lying down on the bed, while a bloodied AAA was lying prone on the blood-splattered floor. CCC asked AAA why she was in such condition, but the latter replied "wala" (nothing).[10] Accused-appellant hurriedly left the house. On his way out, he was met by BBB. BBB knew accused-appellant being a regular customer of his store and who works in a recapping plant in front of their house.[11] BBB asked accused-appellant why he was in AAA's house to which accused-appellant merely replied that he had no idea and ran out. AAA's granddaughter DDD,[12] reported the incident to the police station. Thereafter the police officers proceeded to the recapping plant to look for accused-appellant. The security guard on duty told them that accused-appellant hurriedly left and boarded a tricycle heading north. Accused-appellant's co-worker accompanied the police officers in pursuing accused-appellant. After catching up with accused-appellant, the latter suddenly alighted and ran away.[13] He would subsequently be arrested.

---

[5] Records, p. 2.

[6] Id. at 83.

[7] *Supra* at note 4.

[8] TSN dated 16 May 2013, Witness BBB, p. 9.

[9] *Supra* at note 4.

[10] TSN dated 16 May 2013, Witness CCC, p. 6.

[11] CA *rollo*, pp. 40-41.

[12] *Supra* at note 4.

[13] CA *rollo*, p. 41.

The police also recovered dried marijuana leaves and a bolo from his possession. It was also noted that accused-appellant's underwear had bloodstains.[14]

Meanwhile, AAA was brought to the hospital. Upon examination, she was found to have suffered contusions and abrasions on her back,[15] as well as vaginal lacerations and avulsion on the right lateral vaginal wall secondary to trauma.[16]

Version of the Defense

The defense did not present any evidence. After the prosecution's presentation of evidence, accused-appellant filed a demurrer to evidence without leave of court. The demurrer was denied;[17] hence, the RTC rendered judgment solely on the basis of the prosecution's evidence.

Ruling of the RTC

On 25 May 2015, the RTC rendered its Judgment,[18] the dispositive portion of which reads:

> **WHEREFORE**, in view of all the foregoing, the court finds the accused ARMANDO PEDIDO y BELOERA, **GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code. The court hereby sentences the accused to suffer the penalty of Reclusion Perpetua. The period of detention of the accused shall be counted in the service of his sentence. The accused is likewise ordered to pay the private complainants the following:
>
> 1. The amount of Fifty Thousand Pesos (P50,000) as civil indemnity;
> 2. The amount of Fifty Thousand Pesos (P50,000) as moral damages; and

---

[14] TSN dated 05 November 2013, Witness PO3 Marlon Parol, pp. 6-7.

[15] TSN dated 08 April 2014, Witness Dr. Anne Christie A. Gaballo-Malinao, p. 5.

[16] Index of Exhibits, p. 35.

[17] Records, pp. 232-233.

[18] CA *rollo*, pp. 40-47.

3. The amount of Thirty Thousand Pesos (P30,000) as exemplary damages.

SO ORDERED.[19]

In convicting accused-appellant, the RTC found that the circumstantial evidence presented by the prosecution proved accused-appellant's guilt beyond reasonable doubt. The RTC had to rely on circumstantial evidence because AAA died before she could testify in court. It ruled with certainty that accused-appellant was the perpetrator since he was positively identified as the person who was with AAA upon the discovery of the incident.

The trial court also noted other badges of accused-appellant's guilt: he immediately fled after the commission of the crime; the bloodstains found on accused-appellant's underwear at the time of his arrest; and the result of AAA's medical examination that showed she had sexual intercourse through the employment of force.[20] Moreover, accused-appellant never denied the charges against him.

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

On 29 November 2017, the CA promulgated its assailed Decision,[21] the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The *Judgment* dated 25 May 2015 of the Regional Trial Court of Dumaguete City, Seventh Judicial Region, Branch 38, in Criminal Case No. 2012-21508, convicting accused-appellant Armando Pedido of the crime of *Rape*, is **AFFIRMED with MODIFICATIONS**. As modified, accused-appellant is **ORDERED** to indemnify the heirs of [AAA] as follows: Php75,000.00 as civil indemnity, Php75,000.00, as moral damages, and Php75,000.00 as exemplary damages, plus legal interest on all damages awarded at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

---

[19] Id. at 46-47.

[20] Id. at 41A-44.

[21] *Rollo*. pp. 4-19.

SO ORDERED.[22]

The CA agreed with the RTC that the prosecution had established the criminal liability of accused-appellant through circumstantial evidence.[23] The CA, however, increased the monetary awards to Php75,000.00 each, and imposed a six percent (6%) interest *per annum* on the said monetary awards, to conform with prevailing jurisprudence.[24]

Issue

The sole issue in this case is whether or not accused-appellant's guilt for the crime of rape was proven beyond reasonable doubt.

Ruling of the Court

The appeal is dismissed.

To sustain a conviction for rape, the elements necessary are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, (b) when the victim is deprived of reason or otherwise unconscious, (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.[25]

It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. It becomes even more difficult when rape is committed and the victim could no longer testify, such as in this case where AAA died before her testimony could be presented in court.

However, the accused may still be proven as the perpetrator despite the absence of eyewitnesses. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond

---

[22] ld. at 18-19.

[23] Id. at 12.

[24] Id. at 18.

[25] *People v. Villanueva*, G.R. No. 230723, 13 February 2019.

reasonable doubt. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to prove its case.[26]

Circumstantial evidence is defined as "proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience."[27] Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction, *viz*.:

> SEC. 4. Circumstantial evidence, when sufficient.
>
> — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
> (b) The facts from which the inferences are derived are proven; and
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The RTC and CA considered the following circumstantial evidence in convicting accused-appellant: (1) accused-appellant was positively identified as the person who was with the victim AAA upon the discovery of the incident; (2) accused-appellant immediately fled after the commission of the crime; (3) accused-appellant never denied the charges against him; (4) there were bloodstains on the underwear of accused-appellant at the time of his arrest; and (5) the medical examination conducted on AAA showed that she had engaged in sexual intercourse, but that it was highly impossible for the same to be consensual.[28] These interwoven circumstances formed an unbroken chain clearly pointing to accused-appellant, and no other, as the man who forcefully had carnal knowledge of AAA.

Finding no reason to overturn the findings of the RTC and CA, the Court agrees that the prosecution had adequately proven accused-appellant's guilt beyond reasonable doubt.

---

[26] *See People v. YYY*, G.R. No. 234825, 05 September 2018, 880 SCRA 1, 14.

[27] *People v. ZZZ*, G.R. No. 228828, 24 July 2019.

[28] CA *rollo*, pp. 41A-44; 107-110.

Accused-appellant argues that the combination of these five (5) circumstances do not constitute an unbroken chain that leads to the finding of his guilt for the crime of rape. Specifically, accused-appellant points out that the prosecution failed to establish the use of force to support the finding of rape.[29]

Contrary to accused-appellant's claim, the element of force was sufficiently established by the injuries AAA sustained. To emphasize, AAA sustained not only contusions and abrasions on her body, she also had profuse vaginal bleeding due to severe laceration of the vaginal wall and her anal orifice even sustained a hyperemia. As aptly observed by the RTC, thus:

> Before the (the) attending physician could examine AAA, the latter had to be referred to a surgical doctor since the victim had contusions and abrasions at the back of her body and before she was actually examined by the attending physician, AAA had to be sedated because the patient could not fully extend her legs apart. The injuries found on the vagina of patient AAA consists of a 4 cm laceration, extending from the anterior of the cervix towards the perennial area. As explained by the physician, it was not an ordinary laceration since it has a depth of 2 to 3 millimeters which means that there was really separation of the skin. Moreover, there was hyperemia at the 1 to 10 o'clock position of the anal area. Meaning, there was a manifestation of blood on the anal area of the patient. Without a doubt, these facts are clearly indicative of force in sexual intercourse. x x x.
>
> x x x x.
>
> Even if AAA was a 76-year old menopausal patient expected to have shrinking vagina, the injuries that she sustained in the sexual intercourse was not only caused by these facts. The injuries she sustained was so grave that it was impossible for the sexual intercourse between AAA and the accused to be consensual. x x x[30]

Accused-appellant insists that no one saw him in the act of having carnal knowledge of AAA. The witnesses only arrived after the alleged rape, and that even AAA said nothing happened to her.[31]

---

[29] Id. at 34.

[30] Id. at 44-45.

[31] Id. at 33.

We are not persuaded.

That AAA said "*wala*" when asked about what happened to her does not disprove the fact of rape or absolve accused-appellant of guilt. Time and again the Court had ruled that there is no standard form of behavior among rape victims in the aftermath of their defilement, for people react differently to emotional stress.[32] Some may shout, some may faint, while others may be shocked into insensibility.[33] Yet many victims of rape never complain or file criminal charges against the rapists as they prefer to bear the ignominy and pain, rather than reveal their shame to the world.[34]

Interestingly, accused-appellant fled right after the incident and failed to refute the charge against him. Flight, in the absence of a credible explanation, would be a circumstance from which an inference of guilt might be established because a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.[35]

All the foregoing considered, the Court upholds accused-appellant's conviction and concur with the imposed penalty of *reclusion perpetua*, pursuant to paragraph 1 (a) of Article 266-A,[36] in relation to Article 266-B[37] of the Revised Penal Code,

---

[32] *See People v. Ancajas*, 772 Phil. 166-191 (2015); G.R. No. 199270, 21 October 2015, 773 SCRA 518, 534.

[33] *People v. Lucena*, G.R. No. 190632, 26 February 2014, 717 SCRA 389, 404.

[34] *See People v. Carillo*, 813 Phil. 705-717 (2017), G.R. No 212814, 12 July 2017, 831 SCRA 88, 98.

[35] *See People v. Guro*, G.R. No. 230619, 10 April 2019.

[36] Article 266-A. Rape: When And How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat, or intimidation;

x x x.

[37] Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article (Article 266-A) shall be punished by *reclusion perpetua*.

as amended. We likewise concur with the damages awarded as well as the imposition of six percent (6%) interest per *annum* on all damages awarded reckoned from the date of finality of this judgment until fully paid, pursuant to current jurisprudence.[38]

WHEREFORE, the appeal is hereby **DISMISSED**. The 29 November 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 02088 (CEBU) finding accused-appellant Armando Pedido *y* Beloera **GUILTY** of Rape under paragraph 1 (a) of Article 266-A, in relation to Article 266-B of the Revised Penal Code, as amended, is **AFFIRMED** *in toto*.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Gaerlan, JJ.*, concur.

Carandang, J., on official leave.

---

[38] *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 788 SCRA 331.

THIRD DIVISION

[G.R. No. 242263. November 18, 2020]

ARON ANISCO, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW.— This Court emphasized in *Trinidad v. People*:

> At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers upon the Appellate Court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. CRIMINAL LAW; HOMICIDE, ELEMENTS OF.— The elements of Homicide are the following: (a) a person was killed; (b) the accused killed him/her without any justifying circumstance; (c) the accused had no intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide orinfanticide.

3. ID.; ID.; INTENT TO KILL; FACTORS TO CONSIDER IN THE DETERMINATION OF THE PRESENCE OF INTENT TO KILL.— [I]ntent to kill is evident from the use of a deadly weapon which in this case is a gun. In *Etino v. People*, this Court considered the following factors to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the

circumstances under which the crime was committed; and (5) the motives of the accused.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT ARE CONCLUSIVE, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT; EXCEPTIONS.— Timeless is the legal adage that the factual findings of the trial court, when affirmed by the appellate court, are conclusive.

The Court, however, has recognized several exceptions to this rule in *Equitable Insurance Corporation v. Transmodal International, Inc.*, to wit:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

5. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; ACCIDENT; ELEMENTS OF ACCIDENT IN RELATION TO LAWFUL PERFORMANCE OF DUTY.—Aron's invocation of "accidental firing" to support his allegation of self-defense and his reliance on the ruling of this Court in *Pomoy v. People*, is utterly misplaced.

In *Pomoy*, this Court held:

> The elements of accident are as follows: 1) the accused was at the time performing a lawful act with due care; 2) the resulting injury was caused by mere accident; and 3) on the part of the accused, there was no fault or no intent to cause the injury.
>
> . . .
>
> [W]hat transpired in *Pomoy* is different from the present case. Here, Aron is not a member of the Philippine National Police. Simply put, the transgression of accidentally firing the gun did not occur because Aron is in lawful performance of his duty. Thus, *We* do not agree that the CA committed serious error in its assailed Decision.

6. ID.; HOMICIDE, PENALTY IN CASE AT BAR.— As regards the penalty imposed, Article 249 of the RPC provides that the crime of Homicide is penalized with *reclusion temporal*, the range of which is from twelve (12) years and one (1) day to twenty (20) years. However, records show that Aron voluntarily surrendered to the Maritime Police, thus, Article 64 (2) of the RPC will apply.

> . . .
>
> Verily, following Article 64 (2) of the RPC, the minimum period of *reclusion temporal* shall be imposed. In *Chua v. People*, this Court had the occasion to rule in such wise:
>
> > [A]lthough Article 64 of the *Revised PenaL Code*, which has set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, ***its seventh rule expressly demands that "[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime."*** **By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious.**

Applying Indeterminate Sentence Law, the minimum period or the sentence shall be taken from the penalty next lower in degree, which in this case is *prision mayor*, as the minimum term, to *reclusion temporal* in its minimum period as the maximum term. Thus, the RPC correctly imposed the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

7. CIVIL LAW; DAMAGES; AWARDS OF CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES IN CRIMINAL CASES.— Civil indemnity proceeds from Article 100 of the RPC, which states that "every person criminally liable is also civilly liable." Its award is mandatory upon a finding that Homicide has taken place. Moral damages are awarded to "compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Finally, exemplary damages may be awarded against a person to punish him for his outrageous conduct. It serves to deter the wrongdoer and others like him from similar conduct in the future. The award of this kind of damages in criminal cases stems from Articles 2229 and 2230 of the Civil Code.

APPEARANCES OF COUNSEL

Yncong & Yngcong Law Offices for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

DELOS SANTOS, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December

[1] *Rollo*, pp. 4-27.

[2] Penned by Associate Justice Louis P. Acosta, with Associate Justices

11, 2017 and the Resolution[3] dated August 16, 2018 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 02066, which affirmed with modification the Decision[4] dated January 5, 2012 of the Regional Trial Court (RTC) of Roxas City, Branch 17, convicting Aron Anisco (Aron) of the crime of Homicide.

The Antecedent Facts

Aron and his brother Franklin Anisco (Franklin) were charged with the crime of Homicide for the death of Rolly D. Apinan (Rolly), in an Information dated March 8, 2002, the accusatory portion of which reads:

> That on or about the 1st day of January 2002, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, without any justifiable motive and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shot one Rolly D. Apinan, thereby inflicting upon the latter the following wounds, to wit:
>
> Wounds:
>
> 1. 2 cm. wound with powder burns surrounding area, right nipple line, midclavicular area about 2 cm away from right nipple;
> 2. Wounds at the left chest:
> a. 1 cm in width at the 4th intercostal space, anterior axillary line;
> b. 1 cm in width 3rd intercostal space, [posterior] axillary line.
> c. 0.5 cm in width at 2nd intercostal space, midclavicular line.
> 3. Wounds at left arm:
> a. 0.5 cm wound at left deltoid, area;

Pamela Ann Abella Maxino and Germano Francisco D. Legaspi, concurring; *id.* at 29-40.

[3] Penned by Associate Justice Louis P. Acosta, with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino, concurring; id. at 42-43.

[4] Penned by Presiding Judge Edward B. Contreras; id. at 111-118.

b. 2 cm hematoma, anterior axillary line about 6 cm below axilla, with palpable hard irregular object underneath the skin.
c. Palpable hard object underneath the skin at the posterior deltoid area, about 11 cm below the axilla.
d. Palpable hard object beneath the skin posterior deltoid about 8 cm below the [axilla].

4. Head:
a. Abrasion, 2 cm x 2 cm, left frontal area, about 1 cm below the hairline.
b.1.5 cm below a. or first abrasion, abrasion measuring 2 cm x 1 cm.
c. 2 cm x 0.5 cm abrasion about 1 cm above the left eyebrow.

which wounds caused the death of Rolly D. Apinan, and as a consequence of the crime committed by the said accused, the heirs of the victim suffered compensatory, moral and other damages that may be awarded by this Honorable Court pursuant to the pertinent provisions of the Civil Code of the Philippines, all of which will be proven during trial.

CONTRARY TO LAW.[5]

When arraigned, both accused individually entered a plea of NOT GUILTY.[6]

Thereafter, trial on the merits ensued.

The prosecution presented the following as witnesses: (1) Merla Apinan (Merla), Rolly's wife; (2) Roldan Apinan (Roldan), Rolly's brother; (3) Dr. Ma. Esperanza Gepillano (Dr. Gepillano); (4) Senior Police Officer IV (SPO4) Crispin Azarcon (Azarcon); and (5) SPO1 Cornelio Acielo.[7]

The prosecution's witnesses testified that on January 1, 2002, Rolly, Merla, and Roldan attended the New Year festivities in Sitio Luyo, Barangay Culasi, Roxas City. At about 2:00 in the

---

[5] Id. at 30-31, 111-112.

[6] Id. at 31.

[7] Id.

morning, Rolly danced on the stage while Merla watched below. Roldan, on the other hand, sat on the right side of the stage. Moments later, Aron came up the stage and greeted Rolly. At about the same time, Franklin also went up the stage and pointed a gun at Rolly.[8] He stepped back for about one (1) meter then fired his gun, hitting Rolly on the right chest.[9] Merla and Roldan then came up the stage to help Rolly who fell down after the shooting incident. Aron and Franklin immediately fled the scene, carrying with them the gun that was used by Franklin to shoot Rolly.[10]

Roldan went to the nearby Philippine Ports Authority and asked for help. The guard on duty reported the incident to the Roxas Police Station. Thereafter, a team of police officers arrived and conducted an investigation. Not long after the investigation was conducted, Aron voluntarily surrendered himself to SPO4 Azarcon, a member of the Maritime Police who was stationed in Culasi, Roxas City. Aron was turned over to the investigating police officers, to whom the former allegedly admitted involvement in the shooting incident.[11]

Unfortunately, Rolly died and his body was brought to De Jesus Funeral Parlor. Dr. Gepillano, the City Health Officer who performed the autopsy on Rolly's body, declared the gunshot wound to be fatal. In her Post Mortem Examination Report,[12] Dr. Gepillano stated that Rolly died due to "shock secondary to massive blood loss secondary to gunshot wound to the right chest r/o cardiac tamponade or pneumoperitoneum."[13]

On the other hand, Aron and Franklin testified and invoked the justifying circumstance of self-defense. The defense presented Rolando dela Cruz and Rechel Villagracia to corroborate their

---

[8] Id. at 32.

[9] Id. at 52.

[10] Id. at 32.

[11] Id.

[12] CA records, pp. 282-283.

[13] *Rollo*, p. 32.

statements. Aron narrated that on the date and time of the shooting incident, he and his brother Franklin were at Sitio Luyo, Barangay Culasi, Roxas City looking for Aron's children. They passed by the plaza where a New Year celebration was being held. Aron saw his son, Arjohn, at the back stage and he proceeded to approach him. While Aron was on the stage, he saw Rolly and greeted him, "Happy New Year." However, Rolly pulled out a gun and pointed it at Aron. Instinctively, Aron parried the gun and they (Aron and Rolly) grappled for its possession. While they were grappling, the gun accidentally fired and Rolly fell down. Aron was left standing with the gun in his hands.[14]

In a Decision[15] dated January 5, 2012, the RTC acquitted Franklin due to lack of evidence against him and found the other accused, Aron, guilty beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code (RPC) and sentenced him accordingly, thus:

> Wherefore, premises considered, finding accused Aron Anisco guilty beyond reasonable doubt of the crime of Homicide, he is sentenced to suffer the indeterminate penalty of SIX (6) years and ONE (1) day of prision mayor, as minimum, to TWELVE (12) years and ONE (1) day of Reclusion Temporal, as maximum, and he is ordered to pay the heirs of Rolly Apinan [₱]8,060.00 as actual damages, [₱]50,000.00 as moral damages, [₱]50,000.00 as exemplary damages and [₱]75,000.00 as death indemnity.
>
> Franklin Anisco is acquitted for lack of evidence against him.
>
> SO ORDERED.[16]

The RTC gave more weight and credit to the prosecution witnesses pointing to Aron as the person who shot Rolly. Furthermore, it rejected Aron's contention that he had simply acted in self-defense which resulted in Rolly's death. The RTC ruled that Aron failed to adduce sufficient evidence to prove that he acted in self-defense, which is by presenting that all

---

[14] Id. at 32-33, 114-116.

[15] Id. at 111-118.

[16] Id. at 117-118.

the elements of self-defense are present. Particularly, Aron failed to prove that he adopted reasonable means to repel Rolly's alleged aggression.[17]

Thereafter, Aron filed a motion for reconsideration which the trial court denied in its Order[18] dated March 26, 2012.

Unable to accept the judgment of conviction, Aron appealed to the CA. In a Decision[19] dated December 11, 2017, the CA affirmed with modification the Decision of the RTC in that the appellate court directed Aron to pay the heirs of Rolly: (a) ₱8,060.00 as actual damages; (b) ₱75,000.00 as civil indemnity *ex delicto*; (c) ₱50,000.00 as moral damages; (d) ₱50,000.00 as exemplary damages; and (e) interest at the rate of 6% *per annum* on all the damages awarded from the date of finality of the Decision until fully paid. The CA found no merit in Aron's argument as the latter failed to clearly and convincingly prove the presence of the elements of self-defense. Accordingly, the CA found that the prosecution was able to sufficiently establish Aron's guilt beyond reasonable doubt as all the elements specified under Article 249 of the RPC are present.[20]

The CA further held that the findings of fact of the RTC, its calibration of the testimonies of witnesses and its assessment of their probative weight, as well as its conclusions based on its findings, are accorded by the appellate court with high respect, if not conclusive effect. Absent the showing of a fact or circumstance of weight and influence that was overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of witnesses or other evidence made by the trial court remain binding on the appellate tribunal.[21] The dispositive portion of the Decision reads:

---

[17] Id. at 116-117.

[18] CA records, p. 484.

[19] Id. at 29-40.

[20] Id. at 34-38.

[21] Id. at 38.

Accordingly, the appeal is **DENIED**. The 5 January 2012 *Decision* of the Regional Trial Court, 6th Judicial Region, Branch 17, Roxas City, in Criminal Case No. C-055-03-2002, is **AFFIRMED with MODIFICATION** in that all monetary awards for damages shall earn interest at the legal rate of 6% per annum from the finality of this *Decision* until fully paid.

SO ORDERED.[22]

Unperturbed, Aron filed a Motion for Reconsideration[23] dated February 2, 2018 but such was denied in a Resolution[24] dated August 16, 2018. The *fallo* of the Resolution reads as follows:

There being no new or substantial matters raised which would warrant the modification, much less, reversal of *Our* earlier ruling, accused-appellant's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.[25]

With his motion for reconsideration having been denied, Aron seeks redress before this Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, claiming that:

1. THE CA ERRED IN AFFIRMING ARON'S CONVICTION DESPITE THE TESTIMONIES OF THE PROSECUTION'S EYEWITNESSES THAT IT WAS ALLEGEDLY FRANKLIN WHO SHOT ROLLY; and
2. THE CA ERRED IN AFFIRMING ARON'S CONVICTION BY THRUSTING ASIDE WITHOUT ANY CONSIDERATION ARON'S MAIN DEFENSE OF "ACCIDENTAL FIRING," CONTRARY TO THE RULING IN THE POMOY CASE.[26]

---

[22] Id. at 39-40.

[23] Id. at 119-133.

[24] Id. at 42-43.

[25] Id. at 43.

[26] Id. at 11.

We deny.

This Court emphasized in *Trinidad v. People*:[27]

> At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers upon the Appellate Court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[28]

Proceeding from the foregoing, this Court finds no reason to deviate from the CA's ruling in denying Aron's appeal. Hence, *We* affirm his conviction for the crime of Homicide.

The crime of Homicide is defined and penalized under Article 249 of the RPC, which reads:

> Art. 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

The elements of Homicide are the following: (a) a person was killed; (b) the accused killed him/her without any justifying circumstance; (c) the accused had the intention to kill, which is presumed; and (d) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[29]

As correctly pointed out by the CA, the prosecution has established all the elements specified above, to wit:

---

[27] G.R. No. 239957, February 18, 2019.

[28] Id., citing *People v. Comboy*, 782 Phil. 187, 196 (2016) and *Manansala v. People*, 775 Phil. 514, 520 (2015).

[29] *Ambagan, Jr. v. People*, 771 Phil. 245, 270 (2015), citing *Villanueva v. Caparas*, 702 Phil. 609 (2013).

First, that a person was killed was supported by the fact that Rolly's death was duly established by the Death Certificate and the Post Mortem Examination Report prepared by Dr. Gepillano.

Second, Aron invoked self-defense, however, he has not clearly and convincingly proved all the elements of said justifying circumstance. Hence, this Court agrees that the justifying circumstance of self-defense is not applicable.

Third, intent to kill is evident from the use of a deadly weapon which in this case is a gun. In *Etino v. People*,[30] this Court considered the following factors to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed; and (5) the motives of the accused.[31]

Fourth, when Aron shot Rolly, it was not attended by any of the qualifying circumstances of murder, parricide or infanticide.

Aron insists on his acquittal by asserting that the CA committed serious and reversible error in affirming Aron's conviction despite the testimonies of the witnesses for the prosecution that it was allegedly Franklin who shot the victim.

This Court is not convinced. Timeless is the legal adage that the factual findings of the trial court, when affirmed by the appellate court, are conclusive.[32]

The Court, however, has recognized several exceptions to this rule in *Equitable Insurance Corporation v. Transmodal International, Inc.*,[33] to wit:

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion;

---

[30] 826 Phil. 32 (2018).

[31] Id. at 44, citing *Rivera v. People*, 515 Phil. 824, 832 (2006).

[32] *Pomoy v. People*, 482 Phil. 665 (2004).

[33] 815 Phil. 681 (2017).

(4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[34]

After a careful review of the records, none of the exceptions provided above are present in the case. Hence, Aron cannot simply rely on the testimonies of the witnesses for the prosecution that it was Franklin who shot Rolly as gospel truth. As established by the RTC in its Decision, the prosecution's witnesses identified Aron as the person who shot Rolly to death.[35] Besides, Aron has pleaded self-defense which presupposes an admission that he shot Rolly.

Aron's invocation of "accidental firing" to support his allegation of self-defense and his reliance on the ruling of this Court in *Pomoy v. People*[36] is utterly misplaced.

In *Pomoy*, this Court held:

The elements of accident are as follows: 1) the accused was at the time performing a lawful act with due care; 2) the resulting injury was caused by mere accident; and 3) on the part of the accused, there was no fault or no intent to cause the injury. From the facts, it is clear that all these elements were present. At the time of the incident, petitioner was a member — specifically, one of the investigators — of the Philippine National Police (PNP) stationed at the Iloilo Provincial Mobile Force Company. Thus, it was in the lawful performance of his duties as investigating officer that, under

[34] Id. at 688-689.

[35] *Rollo*, pp. 33, 116.

[36] 482 Phil. 665 (2004).

the instructions of his superior, he fetched the victim from the latter's cell for a routine interrogation.

Again, it was in the lawful performance of his duty as a law enforcer that petitioner tried to defend his possession of the weapon when the victim suddenly tried to remove it from his holster. As an enforcer of the law, petitioner was duty-bound to prevent the snatching of his service weapon by anyone, especially by a detained person in his custody. Such weapon was likely to be used to facilitate escape and to kill or maim persons in the vicinity, including petitioner himself.[37]

Clearly, what transpired in *Pomoy* is different from the present case. Here, Aron is not a member of the Philippine National Police. Simply put, the transgression of accidentally firing the gun did not occur because Aron is in lawful performance of his duty. Thus, *We* do not agree that the CA committed serious error in its assailed Decision.

As regards the penalty imposed, Article 249 of the RPC provides that the crime of Homicide is penalized with *reclusion temporal*, the range of which is from twelve (12) years and one (1) day to twenty (20) years. However, records show that Aron voluntarily surrendered to the Maritime Police, thus, Article 64 (2) of the RPC will apply. Article 64 (2) of the RPC provides:

ART. 64. *Rules for the Application of Penalties which Contain in Three Periods*. — In cases in which the penalties by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x x

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

Verily, following Article 64 (2) of the RPC, the minimum period of *reclusion temporal* shall be imposed. In *Chua v. People*,[38] this Court had the occasion to rule in such wise:

---

[37] Id. at 689-690.

[38] 818 Phil. 1 (2017).

[A]lthough Article 64 of the *Revised Penal Code*, which has the set the rules "for the application of penalties which contain three periods," requires under its first rule that the courts should impose the penalty prescribed by law *in the medium period* should there be neither aggravating nor mitigating circumstances, **its seventh rule expressly demands that "*[w]ithin the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime*." By not specifying the justification for imposing the ceiling of the period of the imposable penalty, the fixing of the indeterminate sentence became arbitrary, or whimsical, or capricious**.[39]

Applying the Indeterminate Sentence Law,[40] the minimum period of the sentence shall be taken from the penalty next lower in degree, which in this case is *prision mayor*, as the minimum term, to *reclusion temporal* in its minimum period as the maximum term. Thus, the RTC correctly imposed the penalty of six (6) years and (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

Likewise, the award of actual damages in the amount of ₱8,060.00 is deemed proper to compensate for Rolly's burial as supported by receipts.

Conformably, the Court enunciated in *People v. Jugueta*,[41] that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, x x x the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present."[42] Accordingly, *We* affirm the trial court's award of ₱75,000.00 as civil indemnity

---

[39] Id. at 24-25, citing *Ladines v. People*, 776 Phil. 75, 85-86 (2016).

[40] Act No. 4103.

[41] 783 Phil. 806 (2016).

[42] Id. at 840.

ex delicto, and increase the award of moral and exemplary damages from ₱50,000.00 to ₱75,000.00 each.

Civil indemnity proceeds from Article 100 of the RPC, which states that "every person criminally liable is also civilly liable." Its award is mandatory upon a finding that homicide has taken place. Moral damages are awarded to "compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered."[43] Finally, exemplary damages may be awarded against a person to punish him for his outrageous conduct. It serves to deter the wrongdoer and others like him from similar conduct in the future.[44] The award of this kind of damages in criminal cases stems from Articles 2229[45] and 2230[46] of the Civil Code.

Likewise, in conformity with current policy, this Court agrees with the CA in imposing on all the monetary awards for damages, interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, the petition is **DENIED**. The Decision dated December 11, 2017 and the Resolution dated August 16, 2018 of the Court of Appeals, Cebu City in CA-G.R. CEB-CR No. 02066 are hereby **AFFIRMED** with further **MODIFICATIONS** in that petitioner Aron Anisco is ordered to pay the heirs of the

---

[43] Id. at 827, citing *Del Mundo v. Court of Appeals*, 310 Phil. 367, 376 (1995).

[44] *People v. Ronquillo*, 818 Phil. 641, 653 (2017).

[45] Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[46] Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

victim, Rolly D. Apinan, the amount of ₱75,000.00 as civil indemnity *ex delicto*, and the increased amounts of ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages. All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid. With costs against petitioner.

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Inting,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 242513. November 18, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ARMANDO BUEZA *y* RANAY,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; ROBBERY WITH RAPE; ELEMENTS THEREOF.— Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of RA 7659. It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and Rape is committed on the occasion thereof or as an accompanying crime.

The following elements must concur in the crime of Robbery with Rape: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the Robbery is accompanied by Rape.

2. ID.; RAPE; REMEDIAL LAW; EVIDENCE; THE ABSENCE OF HYMENAL LACERATIONS DOES NOT DISPROVE THE CRIME OF RAPE.— [T]he Court finds Dr. Guno's medical findings that there was no laceration on the victim's hymen insufficient to disprove the crime of Rape. The absence of hymenal laceration is inconsequential since it is not an element of the crime of Rape. The Court has consistently held that mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. Thus, when a penis comes in contact with the lips of the victim's vagina, the crime of Rape is considered consummated.

3. ID.; GRAVE THREATS; THE FELONY OF GRAVE THREATS MAY BE COMMITTED IN THE PRESENCE OF A NUMBER OF PEOPLE AND IS CONSUMMATED AS SOON AS THE VICTIM HEARD THE THREATENING

REMARKS.— As regards the charge of Grave Threats, the Court agrees with the appellate court that the crime was consummated as soon as the victim heard Bueza utter his threatening remarks. Article 282 of the RPC holds liable for Grave Threats, "any person who shall threaten another with the infliction upon the person, honor, or property of the latter or of his family of any wrong amounting to a crime[.]" The crime is consummated as soon as the threats come to the knowledge of the person threatened.

. . . The appellate court correctly ruled that it was inconsequential that the threat was made in the presence of a number of people since the offense does not require that it be committed in private.

4. ID.; ID.; ROBBERY WITH RAPE; REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CRIMES; PROPER NOMENCLATURE OF CRIMES; THE CRIME OF ROBBERY WITH RAPE IS WITHOUT CORRELATION TO R.A. NO. 7610.— Bueza was charged with and prosecuted for Robbery with Rape and Grave Threats "in relation to Republic Act No. 7610." Pursuant to our ruling in *People v. Tulagan* (*Tulagan*), we find the need to fix the proper nomenclature of the crimes committed. . . .

Thus, the Court fixes the error in the nomenclature of appellant's crimes. As it should now stand, accused-appellant is to be held criminally liable for Robbery with Rape defined under **Article 294, Paragraph 1 of the RPC and of Grave Threats under Article 282 of the RPC. The correlation to RA 7610 is deleted.**

APPEARANCES OF COUNSEL

Office of the Solicitor General for Plaintiff-Appellee.
Public Attorney's Office for Accused-Appellant.

D E C I S I O N

HERNANDO, *J.*:

Accused-appellant Armando Bueza *y* Ranay (Bueza) assails the May 31, 2017 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07713 which affirmed with modifications the August 5, 2015 Joint Decision[2] of the Regional Trial Court (RTC) of Valenzuela City, Branch 172, in Criminal Case Nos. 1224-V-13 and 1225-V-13 finding him guilty beyond reasonable doubt of Robbery with Rape and Grave Threats, respectively.

In Criminal Case No. 1224-V-13, accused-appellant was charged with Robbery with Rape in relation to Republic Act No. 7610 (RA 7610),[3] and with Grave Threats in relation to RA 7610 in Criminal Case No. 1225-V-13, which crimes he allegedly committed as follows:

Criminal Case No. 1224-V-13 (Robbery with Rape):

The undersigned Associate Prosecution Attorney II accuses [ARMANDO BUEZA Y RANAY] of the crime of "Robbery with Rape in relation to R.A. 7610" committed as follows:

On or about August 31, 2013, in [redacted], and within the jurisdiction of this Honorable Court, the accused, by means of violence and intimidation employed on the victim [AAA],[4] 17 years old, (DOB: November 28, 1995), did then and there willfully, unlawfully[,] and

---

[1] *Rollo*, pp. 2-13; penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba.

[2] CA *rollo*, pp. 20-26; penned by Judge Nancy Rivas-Palmones.

[3] Special Protection of Children Against Exploitation, and Discrimination Act.

[4] Initials were used for the name of the victim pursuant to Supreme Court Amended Circular No. 83-2015 or Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances issued on September 5, 2017.

feloniously take, rob, and carry away with her one unit of Myphone Touch Screen worth ₱1,700.00, one unit of Cherry Mobile Q2 worth ₱1,000.00 and one wallet containing Cash amounting to ₱4,000.00, and by reason and on the occasion of the robbery, the accused, with lewd design and by poking a knife, did then and there willfully, unlawfully, feloniously have sexual intercourse with her against her will and without her consent, which acts necessarily include sexual abuse that debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[5]

Criminal Case No. 1225-V-13 (Grave Threats):

The undersigned Associate Prosecution Attorney II accuses [ARMANDO BUEZA Y RANAY] of the crime of "Grave Threats in rel. to R.A. 7610," committed as follows:

On or about September 4, 2013, in [redacted], and within the jurisdiction of this Honorable Court, the accused, without any justifiable cause, did then and there willfully, unlawfully[,] and feloniously threaten the life of [AAA], 17 years old, (DOB: November 28, 1995), by uttering the following words and expressions, to wit:

"HUMANDA KA SA SUSUNOD NATING PAGKIKITA, PAPATAYIN NA KITA."

CONTRARY TO LAW.[6]

On October 1, 2013, accused-appellant pleaded not guilty to both charges during the arraignment.[7]

***Version of the Prosecution*:**

AAA was born on November 28, 1995. She was a 17-year old minor at the time of the complained incidents.

On August 31, 2013, at about 11:30 p.m., AAA was walking towards her boarding house after attending a birthday party when Bueza suddenly pulled her and pushed her to the ground.

---

[5] Records (Criminal Case No. 1224-V-13), p. 1.

[6] Records (Criminal Case No. 1225-V-13), p.1.

[7] Records (Criminal Case No. 1224-V-13), p. 20.

Thereafter, he pointed a knife at her side and declared a hold-up. Accused-appellant forcibly took her two (2) cellphones, each worth ₱1,700.00 and ₱1,000.00, as well as her wallet containing cash amounting to ₱4,000.00.[8]

As there were several people congregating at a nearby bridge, Bueza instructed AAA to stand up, then placed his arm around her shoulder while his other hand poked a knife at her side. He instructed her to walk casually as they pass the bridge ahead. Accused-appellant then brought her inside a public restroom along a narrow alley. While still pointing his knife at her, he removed his shorts and brief. AAA tried to escape but was unsuccessful. She tried begging Bueza to stop but he merely cautioned her not to make a sound. Still at knifepoint, accused-appellant removed her clothes and underwear, kissed her breast and vagina, then inserted his penis into her vagina.[9]

After having carnal knowledge of private complainant, Bueza put on his clothes and told her not to leave the restroom until he was gone or he would kill her.

After accused-appellant had left, AAA went home and recounted the harrowing incident to her landlord, who in turn, accompanied her to the police station to report the incident.

At the police station, AAA reported only the robbery but refrained from disclosing the accompanying rape out of embarrassment. The police tried to look for Bueza but was unable to locate him.

A few days later, or on September 4, 2013, at around 11:00 a.m., AAA chanced upon the accused-appellant standing by the entrance of the grocery store where she was working. Out of fear, the victim immediately returned to her post.

When she noticed that Bueza was no longer at the entrance of the grocery store, she decided to go out to buy her lunch. However, accused-appellant suddenly approached her. When

---

[8] CA *rollo*, p. 21.

[9] Id.

he eventually caught up with her, he held her hand and told her that he would kill her the next time he sees her.

Trembling with fear, she immediately went back to the grocery store and asked permission from her superior to leave. She proceeded to the police station to report that accused-appellant threatened, robbed, and raped her. Thereafter, two police officers accompanied her back to the grocery store where she worked. She then pointed to the accused-appellant which led to the latter's arrest.

Police Chief Inspector Gracia Catherine C. Guno, M.D. (Dr. Guno), conducted a physical and genital examination on the victim. In her Medico-Legal Report No. R13-256N,[10] Dr. Guno's findings showed that AAA did not have evident signs of injuries at the time of the examination. Dr. Guno also opined that while there was no laceration on the victim's hymen at the time of the examination, it did not preclude the possibility of sexual abuse.

Version of the Defense:

Accused-appellant denied the accusations against him. He claimed that on August 31, 2013, he worked as a barker for the passenger jeepneys plying the tollgate near Paso de Blas from 5:00 p.m. until 8:00 p.m. On September 4, 2013, at around 11:00 a.m., he was again in the same tollgate working as a barker.

He denied knowing the victim. However, when asked what moved the private complainant to file a case against him, he claimed that she was a prostitute who transmitted a sexually-acquired disease to his friend. AAA and his friend allegedly had an argument regarding this.

Ruling of the Regional Trial Court:

On August 5, 2015, the trial court found Bueza guilty beyond reasonable doubt of Robbery with Rape and Grave Threats.

---

[10] Records (Criminal Case No. 1224-V-13), p. 39.

The RTC was convinced that the prosecution was able to establish that accused-appellant, who was then armed with a knife, robbed the victim of her personal belongings and raped her thereafter. Further, the trial court found that Bueza, in a separate occasion, had threatened to kill her.

The dispositive portion of the RTC's Joint Decision reads:

> WHEREFORE, the court finds the accused guilty beyond reasonable [doubt] as principal for the crimes of robbery with rape and grave threats in relation to R.A. 7610, and he is hereby sentenced to suffer the following penalties:
>
> 1. In Criminal Case No. 1224-V-13, the penalty of *Reclusion Perpetua* without eligibility for parole, and to pay the victim the sums of [₱]6,700.00 as actual damages, [₱]50,000.00 as civil indemnity and [₱]50,000.00 as moral damages;
>
> 2. In Criminal Case No. 1225-V-13, the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and to pay the victim the sum of [₱]50,000.00 as moral damages.
>
> All awards for actual damages, civil indemnity and moral damages shall bear 6% interest per *annum* from the finality of this decision until full payment thereof.
>
> SO ORDERED.[11]

Aggrieved by the RTC's Joint Decision, Bueza filed a Notice of Appeal.[12]

Ruling of the Court of Appeals:

On May 31, 2017, the CA affirmed the RTC's Joint Decision with modifications on the penalties imposed. In agreeing with the findings of the trial court that accused-appellant had raped the victim, the appellate court held that the lack of hymenal laceration in the private complainant's sexual organ or the

---

[11] CA *rollo*, p. 26.

[12] Id. at 27.

victim's delay in reporting the incident preclude the existence of rape. Here, the delay in this case was neither unreasonable nor unexplained.

With regard to the charge of Grave Threats, the appellate court found that the elements for its commission had been sufficiently established.

The dispositive portion of the CA's Decision reads as follows:

> WHEREFORE, the August 5, 2015 Joint Decision of the Regional Trial Court in Criminal Cases Nos. 1224-V-13 and 1225-V-13 is AFFIRMED but MODIFIED as follows:
>
> 1. In Criminal Case No. 1224-V-13, accused-appellant is hereby ordered to pay AAA the following amounts: [₱]100,000.00 as civil indemnity, [₱]100,000.00 as moral damages, and [₱]100,000.00 as exemplary damages.
>
> 2. In Criminal Case No. 1225-V-13, accused-appellant is hereby sentenced to suffer the penalty of imprisonment of two (2) months and one (1) day to four (4) months of *arresto mayor* and a fine of [₱]200.00.
>
> SO ORDERED.[13]

Dissatisfied with the CA's Decision, Bueza filed a Notice of Appeal.[14]

Issue

Whether or not accused-appellant is guilty of Robbery with Rape and of Grave Threats.

Accused-appellant argues that the trial court gravely erred in convicting him of Robbery with Rape and of Grave Threats since there were gross inconsistencies and contradictions in the prosecution's evidence which failed to definitively identify him as the victim's assailant.[15] He argues that the medical

---

[13] *Rollo*, p. 12.

[14] Id. at 14.

[15] CA *rollo*, pp. 41-56.

examination conducted on the victim revealed no physical injuries inflicted on her, thus belying her accusations of Rape. He also claims that the RTC erred in convicting him of Grave Threats considering that there were several people present at the time the alleged threats were issued. Lastly, he characterizes the victim as lacking in credibility.

Our Ruling

The appeal lacks merit.

Both the trial court and the appellate court correctly found Bueza guilty beyond reasonable doubt of the special complex crime of Robbery with Rape and of Grave Threats.

Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of RA 7659.[16] It contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and Rape is committed on the occasion thereof or as an accompanying crime.[17]

The following elements must concur in the crime of Robbery with Rape: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the Robbery is accompanied by Rape.[18]

After a careful review of the records of the case, the Court agrees with the factual findings and conclusions of the trial court, which were affirmed by the appellate court. The prosecution sufficiently established the elements of the crime of Robbery with Rape, to wit: that on August 31, 2015, Bueza,

---

[16] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES.

[17] *People v. Belmonte*, 813 Phil. 240, 246 (2017).

[18] *People v. Bragat*, 821 Phil. 625, 633 (2017).

while armed with a knife, forcibly took private complainant's two (2) cellular phones and wallet containing ₱4,000.00. Notably, he did not bother to dispute the Robbery. He only disputed the findings of Rape and Grave Threats.

In particular, accused-appellant points out that the results of the medical examination done on the victim showed that she did not suffer bodily injuries or external signs of trauma.[19] He stresses that there were no hymenal lacerations nor traces of semen in her private parts.[20]

Bueza's contentions fail to persuade.

The appellate court correctly held that:

> [T]he absence of hymenal laceration does not exclude the existence of rape. Such explanation is also consistent with the well settled rule that in rape cases, the absence of lacerations in complainant's hymen does not prove that she was not raped. Neither does the lack of semen belie sexual abuse as it is equally settled that 'the absence of sperm samples in the vagina of the victim does not negate rape, because the [presence] of spermatozoa is not an element thereof.'[21]

People v. Opong[22] held in no uncertain terms that:

> An intact hymen does not negate a finding that the victim was raped, and a freshly broken hymen is not an essential element of rape.
>
> x x x x
>
> In *People v. Palicte* and in *People v. Castro*, the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.[23]

---

[19] CA *rollo*, p. 50.

[20] Id. at 51.

[21] *Rollo*, p. 9.

[22] 577 Phil. 571 (2008).

[23] Id. at 592-593.

More recently, the Court held in *People v. Pamintuan*[24] that:

> The presence or absence of injuries would depend on different factors, such as the forcefulness of the insertion, the size of the object inserted, the method by which the injury was caused, the changes occurring in a female child's body, and the length of healing time, if indeed injuries were caused. Thus, the fact that AAA did not sustain any injury in her sex organ does not ipso facto mean that she was not raped.[25]

Accordingly, the Court finds Dr. Guno's medical findings that there was no laceration on the victim's hymen insufficient to disprove the crime of Rape. The absence of hymenal laceration is inconsequential since it is not an element of the crime of Rape. The Court has consistently held that mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge.[26] Thus, when a penis comes in contact with the lips of the victim's vagina, the crime of Rape is considered consummated.

As regards the charge of Grave Threats, the Court agrees with the appellate court that the crime was consummated as soon as the victim heard Bueza utter his threatening remarks.[27] Article 282 of the RPC holds liable for Grave Threats, "any person who shall threaten another with the infliction upon the person, honor, or property of the latter or of his family of any wrong amounting to a crime[.]" The crime is consummated as soon as the threats come to the knowledge of the person threatened.[28]

In this case, it is clear that accused-appellant's threat to kill the private complainant is a wrong on the person amounting to, at the very least, homicide under the RPC. The felony of

---

[24] 710 Phil. 414 (2013).

[25] Id. at 423.

[26] *People v. Campuhan*, 385 Phil. 912, 920 (2000).

[27] CA *rollo*, p. 122.

[28] *Paera v. People*, 664 Phil. 630, 637 (2011).

Grave Threats was consummated the moment she heard Bueza utter his threatening remarks. The appellate court correctly ruled that it was inconsequential that the threat was made in the presence of a number of people since the offense does not require that it be committed in private.

However, we note that Bueza was charged with and prosecuted for Robbery with Rape and Grave Threats "in relation to Republic Act No. 7610."[29] Pursuant to our ruling in *People v. Tulagan (Tulagan)*,[30] we find the need to fix the proper nomenclature of the crimes committed. *Tulagan* teaches that:

> '[F]orce, threat or intimidation' is the element of rape under the RPC, while 'due to coercion or influence of any adult, syndicate or group' is the operative phrase for a child to be deemed 'exploited in prostitution or other sexual abuse,' which is the element of sexual abuse under Section 5(b) of R.A. 7610. x x x
>
> x x x x
>
> Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where 'force, threat or intimidation' is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610 x x x.
>
> x x x x
>
> Assuming that the elements of both violations of Section 5 (b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information x x x the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610.

Thus, the Court fixes the error in the nomenclature of appellant's crimes. As it should now stand, accused-appellant is to be held criminally liable for Robbery with Rape defined

---

[29] *Supra* notes 5 & 6.

[30] G.R. No. 227363, March 12, 2019.

under **Article 294, Paragraph 1 of the RPC and of Grave Threats under Article 282 of the RPC. The correlation to RA 7610 is deleted**.

Based on the evidence on record, the Court finds no reason to reverse the Decision of the appellate court affirming the trial court's Joint Decision in Criminal Case Nos. 1224-V-13 and 1225-V-13. The Court likewise affirms the modified penalties imposed since the same are in line with recent jurisprudence and the relevant provision of the RPC.[31] However, there is a need to further modify the monetary awards in Criminal Case No. 1224-V-13. Pursuant to prevailing jurisprudence,[32] the awards of civil indemnity, moral damages, and exemplary damages, are reduced to ₱75,000.00 each.

WHEREFORE, the appeal is **DISMISSED**. The May 31, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07713 is **AFFIRMED with MODIFICATION**. Accused-appellant Armando Bueza *y* Ranay is hereby found **GUILTY** of Robbery with Rape under Article 294, Paragraph 1, and of Grave Threats under Article 282 of the Revised Penal Code. The correlation to Republic Act No. 7610 is **DELETED**. The awards of civil indemnity, moral damages, and exemplary damages in Criminal Case No. 1224-V-13 are **REDUCED** to ₱75,000.00 each.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo*,[*] *Delos Santos*, and *Rosario, JJ.*, concur.

---

[31] See *People v. Salen*, G.R. No. 231013, January 29, 2020.

[32] Id. See also *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[*] Designated as additional member per raffle dated November 11, 2020 vice *J.* Inting who penned the assailed Decision of the Court of Appeals.

SECOND DIVISION

[G.R. No. 223763. November 23, 2020]

ADORACION L. BASILIO AND LOLITA P. LUCERO, *Petitioners, v.* **PERLA CALLO,** *Respondent*.

SYLLABUS

1. CIVIL LAW; LAND TITLE AND DEEDS; THE PUBLIC LAND ACT (COMMONWEALTH ACT. NO. 141), AS AMENDED BY R.A. NO. 6940; FREE PATENT; REQUIREMENTS FOR THE GRANT OF FREE PATENT. — At the time respondent filed her free patent application before the Community Environment and Natural Resources Office III-3, Olongapo City (CENRO) on February 9, 2006, the governing law was Section 44, Chapter VII of Commonwealth Act No. (CA)141, as amended by Republic Act No. (RA) 6940, which laid down the requirements an applicant must satisfy before a free patent is granted, . . .

The case of *Taar v. Lawan* summarized the concurring requirements a free patent applicant must satisfy, namely: (1) the applicant must be a natural-born citizen of the Philippines; (2) the applicant must not own more than 12 hectares of land; (3) the applicant or his or her predecessor-in-interest must have continuously occupied and cultivated the land; (4) the continuous occupation and cultivation must be for a period of at least 30 years before April 15, 1990, which is the date of effectivity of RA 6940; and (5) payment of real estate taxes on the land while it has not been occupied by other persons.

2. ID.; ID.; ID.; ID.; ID.; POSSESSION BY VIRTUE OF A MORTGAGE IS INCOMPATIBLE WITH POSSESSION IN THE CONCEPT OF OWNER.— While respondent's free patent application was not presented before the courts below, records show that she admitted the fact of mortgage, and that she unilaterally appropriated the subject lot despite the redemption of the mortgage. Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion. Verily, possession by virtue of a mortgage, especially one which had already been redeemed is incompatible with

possession in the concept of owner. For this reason alone, respondent was not entitled to a free patent to the subject lot.

3. ID.; ID.; ID.; ID.; ID.; *PACTUM COMMISSORIUM*; MORTGAGE; MERE LAPSE OF THE REDEMPTION PERIOD OF THE MORTGAGE DOES NOT CONVERT THE MORTGAGEE'S POSSESSION INTO ONE IN THE CONCEPT OF AN OWNER.— Neither can respondent claim possession in the concept of owner by virtue of the mere lapse of the redemption period because the same would amount to *pactum commissorium*, which is prohibited by law. Settled is the rule that the mortgagor's default does not operate to vest the mortgagee the ownership of the mortgaged property. Before perfect title over a mortgaged property may be secured by the mortgagees, they must, in case of non-payment of the debt, foreclose the mortgage first and thereafter purchase the mortgaged property at the foreclosure sale.

4. ID.; ID.; ID.; ID.; FAILURE TO STATE IN THE FREE PATENT APPLICATION THE FACTS OF THE MORTGAGE IS CONCEALMENT CONSTITUTIVE OF FRAUD AND MISREPRESENTATION, WHICH ARE SUFFICIENT TO CAUSE THE CANCELLATION OF THE FREE PATENT AND TITLE.— Under Section 91 of CA 141, as amended, "the statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statements therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted. x x x." . . .

. . .

Respondent's failure to state in her free patent application that the mortgage by reason of which she took possession of the subject lot had already been redeemed, and that she unilaterally appropriated the subject lot without foreclosing the mortgage amounted to a concealment of material facts belying claim of possession in the concept of owner. These acts were constitutive of fraud and misrepresentation within the context of Section 91 of CA 141, as amended, and were sufficient to

cause *ipso facto* the cancellation of her free patent and title. Accordingly, the nullity of respondent's Free Patent No. 037109 0617641 and the title issued pursuant thereto should be declared.

5. ID.; ID.; THE PUBLIC LAND ACT (C.A. NO. 141), AS AMENDED BY R.A. NO. 3872; ACQUISITION OF ALIENABLE AND DISPOSABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN; UPON COMPLIANCE WITH THE CONDITIONS SPECIFIED IN SECTION 48(B) OF C.A. NO. 141, AS AMENDED, THE POSSESSOR IS DEEMED TO HAVE ACQUIRED, BY OPERATION OF LAW, A RIGHT TO A GOVERNMENT GRANT WITHOUT THE NECESSITY OF A CERTIFICATE OF TITLE.— [P]etitioners' claim of ownership over the subject lot was based on their alleged right as heirs of the averred owner Eduveges, who had declared the same for tax purposes under her name, and which rights they acquired on the basis of a Final Project of Partition of Eduveges' estate. Records show that Eduveges was the prior occupant and cultivator of the subject lot, and was the recorded survey claimant as of 1944, whose heirs had continuously possessed and cultivated the subject lot until the same was mortgaged to Sps. Callo in 1974, redeemable within five (5) years.

At that time, the law governing the acquisition of alienable and disposable agricultural lands of the public domain was CA 141, as amended by RA 3872. Applicants were free to avail of any of the two (2) modes, *i.e.*, administrative legalization or judicial legalization. However, under both modes, there must be continuous occupation and cultivation either by the applicant himself or through his predecessors-in-interest of agricultural lands of the public domain for a certain length of time. Section 44 thereof, which governs the administrative legalization by free patent requires possession from July 4, 1926 or prior thereto. On the other hand, Section 48 (b) provides that when the conditions specified therein — *i.e.* (*a*) continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, (*b*) *bona fide* claim of acquisition or ownership, and (*c*) possession and occupation for at least thirty years — are complied with, **the possessor is deemed to have acquired, by operation of law, a right to a government grant, without necessity of a certificate of title being issued, and**

the land ceases to be part of the public domain and beyond the authority of the Director of Lands.

6. ID.; ID.; ID.; ID.; CONFIRMATION PROCEEDINGS; REGISTRATION OF TITLE; ONCE A REAL PROPERTY IS ACQUIRED BY GRANT OF THE STATE, IT BECOMES A PRIVATE PROPERTY, AND THE CONFIRMATION PROCEEDINGS MERELY CONFIRMS SUCH A CONVERSION AND THE REGISTRATION SIMPLY RECOGNIZES THE VESTED TITLE.— [I]f by legal fiction, the possessor had acquired the land in question by grant of the State, it had already ceased to be part of the public domain and **had become private property, at least by presumption, beyond the control of the Director of Lands**. Case law has, thus, recognized, that in such cases, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only **confirm such a conversion already effected by operation of law *from the moment the required period of possession became complete***.

In this case, no less than the land investigator who recommended the grant of respondent's application for free patent recognized petitioners' and their predecessor's occupation and cultivation as early as 1944. Thus, when the mortgage was constituted in 1974, petitioners have been possessors in the concept of owners of the subject lot, which is an alienable and disposable land, for at least thirty (30) years, and as such, have in their favor the **conclusive presumption** that the subject lot had ceased to be public land.

7. ID.; ID.; ID.; ID.; ACTION FOR RECONVEYANCE; WHEN THE ESSENTIAL REQUISITES FOR JUDICIAL CONFIRMATION OF AN IMPERFECT TITLE HAVE ALREADY BEEN COMPLIED WITH, THE RIGHTFUL OWNERS OR SUCCESSORS-IN-INTEREST CAN ASK FOR RECONVEYANCE OF A PROPERTY THAT WAS WRONGFULLY REGISTERED IN THE NAME OF ANOTHER.— That the subject lot was not registered under the name of the heirs of Eduveges (Eduveges heirs) prior to

the issuance of OCT No. P-24666 in respondent's name would not effectively deny the remedy of reconveyance to the former. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him. At the time the subject lot was mortgaged in 1974, the Eduveges heirs already possessed the essential requisites for judicial confirmation of an imperfect title under CA 141, . . . Considering the foregoing, the Eduveges heirs' real right of possession over the subject lot cannot be said to have already been lost. Hence, petitioners' right, as heirs of Eduveges, to ask for the reconveyance of the subject lot is irrefutable.

8. ID.; ID.; ID.; ID.; FREE PATENT; PRINCIPLE OF ENFORCEMENT OF A CONSTRUCTIVE TRUST; THE RIGHTFUL OWNER MAY BRING AN ACTION FOR RECONVEYANCE OF A PARCEL OF LAND THAT WAS FRAUDULENTLY ACQUIRED THROUGH A FREE PATENT AND UNLAWFULLY TITLED BY ANOTHER.— As a rule, a free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion pursuant to Section 101 of CA 141, as amended. A recognized exception is that situation where plaintiff-claimant seeks direct reconveyance from defendant public land unlawfully and in breach of trust titled by him, on the principle of enforcement of a constructive trust. Thus, a private individual may bring an action for reconveyance of a parcel of land even if the title thereof was issued through a free patent to show that the person who secured the registration of the questioned property is not the real owner thereof. In sum, since respondent's possession was not shown to be in the concept of an owner, and that the land applied for had ceased to be part of the public domain by reason of the operation of RA 3872 in favor of the Eduveges heirs, the reversal of the assailed decision is in order.

APPEARANCES OF COUNSEL

Joseph Jonathan A. Bactad for petitioners.
Ablola-Ebarle Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated September 30, 2015 and the Resolution[3] dated March 18, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 97617, which reversed and set aside the Decision[4] dated July 5, 2011 of the Regional Trial Court of Iba, Zambales, Branch 71 (RTC) in Civil Case No. RTC-2450-I that granted the complaint for reconveyance, *accion publiciana*, and cancellation of title with damages filed by petitioners Adoracion L. Basilio and Lolita P. Lucero (Lolita; collectively, petitioners) against respondent Perla Callo (respondent).

The Facts

The instant controversy stemmed from a complaint[5] for reconveyance, *accion publiciana*, and cancellation of title with damages filed by petitioners against respondent before the RTC, seeking to: *(a)* recover a 12,459-square meter parcel of land located at West Dirita, San Antonio, Zambales, designated as Lot No. 4462 (subject lot), covered by Original Certificate of Title (OCT) No. P-24666[6] in respondent's name; and *(b)* annul OCT No. P-24666.

Petitioners claimed to be direct descendants of Eduveges Bañaga[7] (Eduveges) who died intestate on September 24, 1921,

---

[1] *Rollo*, pp. 11-31.

[2] *Id.* at 38-51. Penned by Associate Justice Ramon Paul L. Hernando (now a Member of the Court) with Associate Justices Jose C. Reyes, Jr. (retired Member of the Court) and Stephen C. Cruz, concurring.

[3] *Id.* at 54-55.

[4] *Id.* at 57-69. Penned by Presiding Judge Consuelo Amog-Bocar.

[5] *Id.* at 91-93. Dated September 19, 2006.

[6] *Id.* at 140, including dorsal portion.

[7] "Eduvegez Bañaga" or "Eduviges Bañaga" in some parts of the records.

leaving several parcels of land, including the subject lot which was declared in Eduveges' name. Per Final Project of Partition[8] of Eduveges' estate executed in 1973,[9] the subject lot was awarded to petitioners, among others, as children of Eduveges' daughter Rufina Pascasio (Rufina) who passed away on December 30, 1943.[10]

On March 25, 1971, Librada[11] Lucero, one of Rufina's eight (8) children,[12] mortgaged a one-half (1/2) undivided portion of the subject lot to spouses Edilberto and respondent Perla Callo (Sps. Callo) for the amount of ₱2,800.00 under a Deed of Mortgage of Real Property[13] (1971 mortgage), which allowed Sps. Callo to enter and till the land until payment of the loan.[14] In March 1974, a 5/8 portion of the same lot was mortgaged[15] to Sps. Callo by Librada, petitioners and their other sibling, Remedios[16] (collectively, *Luceros*), for the amount of ₱6,300.00,[17] while the remaining 3/8 was mortgaged to Eulalio Callo, Edilberto's father, for the amount of ₱3,800.00 (1974

---

[8] Records, pp. 229-237. Docketed as Special Proceedings No. 346.

[9] See Formal Offer of Evidence; *id.* at 223.

[10] See *id.* at 229.

[11] Erroneously stated as Lolita. See *rollo*, p. 92.

[12] See Final Project of Partition; records, p. 229.

[13] *Rollo*, p. 138. The mortgage document shows that petitioners, as well as Remedios Lucero, were witnesses thereto.

[14] See *id.* at 39 and 57.

[15] While the Deed of Mortgage of Real Property dated March 2, 1974, which was marked during the preliminary conference as Exhibit "6" for respondent, was adopted during the pre-trial conference, respondent was not able to formally offer the same as she was deemed to have waived her right to do so. See Minutes of Preliminary Conference held on January 8, 2007 (records, p. 39), Order dated January 18, 2007 (records, p. 58), and Order dated April 26, 2011 (records, p. 304).

[16] See TSN, September 16, 2010; *id.* at 283.

[17] See Supplemental Report dated May 23, 2006 written by Spl. Land Investigator Emelita A. Lambinicio; records, p. 246. See also TSN, February 15, 2007; *id.* at 72.

mortgage). The mortgage, which allowed the mortgagees to cultivate the land, was redeemable within five (5) years.[18] The mortgage was supposedly extinguished by the full payment of the loan on March 29, 1996, and the corresponding Release of Mortgage[19] (1996 Release of Mortgage) was executed by Sps. Callo. Thereafter, petitioners demanded Sps. Callo to vacate the subject lot but they refused. Instead, they filed a petition for security of tenure against Lolita before the Department of Agrarian Reform Adjudication Board (DARAB), seeking to be recognized as tenants over the subject lot, and not to be ejected therefrom, which was, however, dismissed.[20]

On May 25, 2006, petitioners went to Olongapo City to process the survey of the subject lot preliminary to its titling in their names, but learned that the same was already registered in the name of respondent under OCT No. P-24666, prompting the filing of the complaint alleging that the said title was secured through fraud and under a fictitious and anomalous claim of ownership.[21]

In her Answer with Compulsory Counterclaim,[22] respondent averred that: *(a)* she acquired her title legally after complying with the requirements of the law; *(b)* whatever rights petitioners may have over the subject lot had long been waived, the subject lot being a public land, untitled, with no pending application for patent prior to her application; *(c)* she had been in uninterrupted possession of the subject lot for over 35 years publicly in the concept of owner; and *(d)* petitioners have no cause of action against her and are not the real parties-in-interest.[23]

---

[18] See *rollo*, pp. 58-59.

[19] *Id.* at 139.

[20] See *id.* at 92. See also Decision dated July 18, 1997 in DARAB Case No. R-0307-0002-96; *id.* at 101-103. Penned by Provincial Adjudicator Benjamin M. Yambao.

[21] See *id.*

[22] *Id.* at 106-108.

[23] See *id.* at 39-40 and 107.

The RTC Ruling

In a Decision[24] dated July 5, 2011, the RTC found that respondent committed fraud in procuring a free patent and later, a torrens title in her name when she: *(a)* misrepresented that she had lawful claim to the subject lot; and *(b)* concealed the fact that her occupancy and possession thereof were by virtue of a mortgage which had already been terminated. Thus, it declared OCT No. P-24666 null and void *ab initio*, and without legal force and effect, and accordingly, ordered respondent to reconvey and peacefully surrender possession of the subject lot to petitioners, and to pay ₱50,000.00 attorney's fees and the costs of suit.[25]

Aggrieved, respondent appealed to the CA.

The CA Ruling

In a Decision[26] dated September 30, 2015, the CA reversed and set aside the RTC Decision, holding that petitioners failed to show clear and convincing evidence of their title to the subject lot and the fact of fraud on the part of respondent in registering the same, and thereby dismissed the complaint.[27]

Dissatisfied, petitioners sought reconsideration, which was, however, denied in a Resolution[28] dated March 18, 2016; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly dismissed the complaint.

The Court's Ruling

The petition is partly meritorious.

---

[24] *Id.* at 57-69.

[25] See *id.* at 67-69.

[26] *Id.* at 38-51.

[27] See *id.* at 41-50.

[28] *Id.* at 54-55.

At the time respondent filed her free patent application before the Community Environment and Natural Resources Office III-3, Olongapo City (CENRO) on February 9, 2006,[29] the governing law was Section 44, Chapter VII of Commonwealth Act No. (CA) 141,[30] as amended by Republic Act No. (RA) 6940,[31] which laid down the requirements an applicant must satisfy before a free patent is granted, thus:

> SECTION 44. Any **natural-born citizen of the Philippines** who is **not the owner of more than twelve (12) hectares** and who, for **at least thirty years (30) prior to the effectivity of this amendatory Act**, has **continuously occupied and cultivated**, either by himself or through his predecessors-in-interest a tract or tracts of **agricultural public lands** subject to disposition, who shall **have paid the real estate tax thereon while the same has not been occupied by any person** shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares. (Emphases supplied).

The case of *Taar v. Lawan*[32] summarized the concurring requirements a free patent applicant must satisfy, namely: (1) the applicant must be a natural-born citizen of the Philippines; (2) the applicant must not own more than 12 hectares of land; (3) the applicant or his or her predecessor-in-interest must have continuously occupied and cultivated the land; (4) the continuous

---

[29] See Report dated February 10, 2006 signed by Spl. Land Investigator/ LMI/DPLI Emelita A. Lambinicio; records, p. 245.

[30] Entitled "AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN," otherwise known as "The Public Land Act," approved on November 7, 1936.

[31] Entitled "AN ACT GRANTING A PERIOD ENDING ON DECEMBER 31, 2000 FOR FILING APPLICATIONS FOR FREE PATENT AND JUDICIAL CONFIRMATION OF IMPERFECT TITLE TO ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN UNDER CHAPTERS VII AND VIII OF THE PUBLIC LAND ACT (CA 141, AS AMENDED)," approved on March 28, 1990. RA 9176 (approved on November 13, 2002) extended until December 31, 2020 the period for the filing of applications for administrative legalization (free patent) and judicial confirmation of imperfect and incomplete titles to alienable and disposable lands of the public domain.

[32] 820 Phil. 26 (2017).

occupation and cultivation must be for a period of at least 30 years before April 15, 1990, which is the date of effectivity of RA 6940; and (5) payment of real estate taxes on the land while it has not been occupied by other persons.[33]

In the present case, respondent admitted having come into possession and cultivation of the subject lot only by virtue of the mortgage executed by the *Luceros*.[34] Hence her possession fell short of the legal requisites considering that: *(a)* possession was **not** *(i)* in the concept of owner since she had effectively affirmed petitioners' ownership when she and her husband filed the DARAB petition for security of tenure as tenants in 1996 after the mortgage was redeemed and *(ii)* continuous for at least 30 years prior to April 15, 1990 or at least since April 15, 1960 as required by law; and *(b)* payment of real taxes was made after the same land had been occupied and continuously declared under the name of Eduveges.

Under Section 91 of CA 141, as amended, "the statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statements therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration, or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted. x x x." While respondent's free patent application was not presented before the courts below, records show that she admitted the fact of mortgage, and that she unilaterally appropriated the subject lot despite the redemption of the mortgage. Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion.[35] Verily, possession by virtue of a mortgage, especially one which had already been redeemed is incompatible with

---

[33] *Id.* at 54. Also cited in *Jaucian v. De Joras*, G.R. No. 221928, September 5, 2018.

[34] See *rollo*, p. 62.

[35] See Article 540 of the Civil Code.

possession in the concept of owner. For this reason alone, respondent was not entitled to a free patent to the subject lot.

Neither can respondent claim possession in the concept of owner by virtue of the mere lapse of the redemption period because the same would amount to *pactum commissorium*, which is prohibited by law. Settled is the rule that the mortgagor's default does not operate to vest the mortgagee the ownership of the mortgaged property. Before perfect title over a mortgaged property may be secured by the mortgagees, they must, in case of non-payment of the debt, foreclose the mortgage first and thereafter purchase the mortgaged property at the foreclosure sale.[36] Thus, upon the expiration of the five (5)-year redemption period, mortgagees Sps. Callo *should have* foreclosed the mortgage, but they did not do so. *Instead*, they accepted payment from Lolita despite the lapse of the redemption period, and executed the corresponding release of mortgage. Respondent even admitted that the March 1974 mortgage, which was a renewal of the 1971 mortgage,[37] had indeed been redeemed.[38]

Respondent's failure to state in her free patent application that the mortgage by reason of which she took possession of the subject lot had already been redeemed, and that she unilaterally appropriated the subject lot without foreclosing the mortgage amounted to a concealment of material facts belying claim of possession in the concept of owner. These acts were constitutive of fraud and misrepresentation within the context of Section 91 of CA 141, as amended, and were sufficient to cause *ipso facto* the cancellation of her free patent and title. Accordingly, the nullity of respondent's Free Patent No. 037109 0617641 and the title issued pursuant thereto should be declared.

On the other hand, petitioners' claim of ownership over the subject lot was based on their alleged right as heirs of the averred owner Eduveges, who had declared the same for tax purposes

---

[36] See *Ramirez v. CA*, 456 Phil. 345, 353 (2003).

[37] See TSN, September 16, 2010; records, p. 284.

[38] See TSN, November 11, 2010; *id.* at 295.

under her name, and which rights they acquired on the basis of a Final Project of Partition[39] of Eduveges' estate. Records show that Eduveges was the prior occupant and cultivator of the subject lot, and was the recorded survey claimant as of 1944,[40] whose heirs had continuously possessed and cultivated the subject lot until the same was mortgaged to Sps. Callo in 1974, redeemable within five (5) years.[41]

At that time, the law governing the acquisition of alienable and disposable agricultural lands of the public domain was CA 141, as amended by RA 3872.[42] Applicants were free to avail of any of the two (2) modes, *i.e.*, administrative legalization or judicial legalization. However, under both modes, there must be continuous occupation and cultivation either by the applicant himself or through his predecessors-in-interest of agricultural lands of the public domain for a certain length of time. Section 44[43] thereof, which governs the administrative legalization by free patent requires possession from July 4, 1926 or prior thereto.

---

[39] See *id.* at 229-237.

[40] Eduveges passed away on September 24, 1921 (see *id.* at 229); hence, possession is implicitly even prior to 1944.

[41] See Supplemental Report dated May 23, 2006 written by Spl. Land Investigator Emelita A. Lambinicio; *id.* at 245-246.

[42] Entitled "AN ACT TO AMEND SECTIONS FORTY-FOUR, FORTY-EIGHT AND ONE HUNDRED TWENTY OF COMMONWEALTH ACT NUMBERED ONE HUNDRED FORTY-ONE, AS AMENDED, OTHERWISE KNOWN AS THE 'PUBLIC LAND ACT,' AND FOR OTHER PURPOSES," approved on June 18, 1964.

[43] Section 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares and who since July fourth, nineteen hundred and twenty-six or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares.

A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall

On the other hand, Section 48 (b)[44] provides that when the conditions specified therein — *i.e.*, *(a)* continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, *(b) bona fide* claim of acquisition or ownership, and *(c)* possession and occupation for at least thirty years — are complied with, **the possessor is deemed to have acquired, by operation of law, a right to a government grant, without necessity of a certificate of title being issued, and the land ceases to be part of the public domain and beyond the authority of the Director of Lands.** Thus, if by legal fiction, the possessor had acquired the land in question by grant of the State, it had already ceased to be part of the public domain and **had become private property, at least by presumption, beyond the control of the Director of Lands**.[45] Case law has, thus, recognized, that in such cases, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would

---

be entitled to the right granted in the preceding paragraph of this section: *Provided*, That at the time he files his free patent application he is not the owner of any real estate secured or disposable under this provision of the Public Land Law. (Underscoring supplied)

[44] Section 48 (b) reads:

Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest there in, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x

(b) Those who by themselves or through their predecessors-in-interest have been, in continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title, except when prevented by war of *force majeure*. Those shall be **conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter**. (Emphasis and underscoring supplied)

[45] See *Abejaron v. Nabasa*, 411 Phil. 552, 566-567 (2001), citing *Susi v. Razon*, 48 Phil. 424, 427-428 (1925).

not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only **confirm such a conversion already effected by operation of law *from the moment the required period of possession became complete***.[46]

In this case, no less than the land investigator who recommended the grant of respondent's application for free patent recognized petitioners' and their predecessor's occupation and cultivation as early as 1944. Thus, when the mortgage was constituted in 1974,[47] petitioners have been possessors in the concept of owners of the subject lot, which is an alienable and disposable land,[48] for at least thirty (30) years, and as such, have in their favor the **conclusive presumption** that the subject lot had ceased to be public land.

That the subject lot was not registered under the name of the heirs of Eduveges (Eduveges heirs) prior to the issuance of OCT No. P-24666 in respondent's name would not effectively deny the remedy of reconveyance to the former. An action for reconveyance is a legal and equitable remedy granted to the rightful landowner, whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.[49] At the time the subject lot was mortgaged in 1974, the Eduveges heirs already possessed the essential requisites for judicial confirmation of an imperfect title under CA 141, having completed the required thirty (30)-year period of open, continuous, adverse and public possession of the subject lot in the concept of owners. Thus, it cannot be gainsaid that the Eduveges heirs, by themselves and through their predecessors-in-interest, had already acquired a ***vested***

---

[46] *Id.* at 568-569, citing *Director of Lands v. Intermediate Appellate Court*, 230 Phil. 590, 602 (1986).

[47] See Supplemental Report dated May 23, 2006 written by Spl. Land Investigator Emelita A. Lambinicio; records, pp. 245-246.

[48] See *id.* at 247.

[49] *Lorzano v. Tabayag, Jr.*, 681 Phil. 39, 57 (2012).

right over the subject lot, which conferred an effective title on them as such possessors on account of which the land ceased to be public, to become private property, at least by presumption. Notably, respondent continuously recognized the Eduveges heirs' ownership as she even allowed the redemption of the subject lot despite the long lapse of the redemption period, and thereafter, filed the DARAB case seeking to be recognized as tenants thereon. If at all, she only started claiming an adverse interest thereon in 2006 when she filed the free patent application, secured an assessment notice over the subject lot, and paid the realty taxes thereon for the first time in her name. Meanwhile, the subject lot was continuously declared in Eduveges' name. Considering the foregoing, the Eduveges heirs' real right of possession over the subject lot cannot be said to have already been lost.[50] Hence, petitioners' right, as heirs of Eduveges, to ask for the reconveyance of the subject lot is irrefutable.

As a rule, a free patent that was fraudulently acquired, and the certificate of title issued pursuant to the same, may only be assailed by the government in an action for reversion pursuant to Section 101 of CA 141, as amended.[51] A recognized exception is that situation where plaintiff-claimant seeks direct reconveyance from defendant public land unlawfully and in breach of trust titled by him, on the principle of enforcement of a constructive trust. Thus, a private individual may bring an action for reconveyance of a parcel of land even if the title thereof was issued through a free patent to show that the person who secured the registration of the questioned property is not the real owner thereof.[52] In sum, since respondent's possession was not shown to be in the concept of an owner, and that the land applied for had ceased to be part of the public domain by reason of the operation of RA 3872 in favor of the Eduveges heirs, the reversal of the assailed decision is in order.

---

[50] See Article 555 of the Civil Code, which pertinently provides that the real right of possession is not lost till after the lapse of ten years.

[51] *Lorzano v. Tabayag, Jr., supra* at 49.

[52] *Id.* at 55.

At this juncture, we deem it necessary to reiterate our disquisition in *Naval v. Court of Appeals*,[53] thus:

> The fact that petitioner was able to secure a title in her name did not operate to vest ownership upon her of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. **Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.** (Emphasis supplied)

WHEREFORE, the instant petition is **PARTLY GRANTED**. The Decision dated September 30, 2015 and the Resolution dated March 18, 2016 of the Court of Appeals in CA-G.R. CV No. 97617 are hereby **REVERSED and SET ASIDE**. A new judgment is rendered declaring: *(a)* Free Patent No. 037109 0617641 and the corresponding Original Certificate of Title No. P-24666 issued by the Register of Deeds of Zambales in the name of respondent Perla Callo as null and void *ab initio*; *(b)* the heirs of Eduveges Bañaga, represented by petitioners Adoracion L. Basilio and Lolita Lucero as the rightful owners of the subject lot; and *(c)* the Eduveges heirs as entitled to either judicial confirmation or administrative legalization of their incomplete or imperfect title, subject to compliance with the requirements therefor.

Costs against respondent.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and *Rosario,*[*] *JJ.*, concur.

---

[53] 518 Phil. 271, 282-283 (2006); citations omitted.

[*] Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

THIRD DIVISION

[G.R. No. 229010. November 23, 2020]

IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF LUZ GASPE LIPSON AND ISSUANCE OF LETTERS TESTAMENTARY

ROEL P. GASPI, *Petitioner*, *v.* **HONORABLE JUDGE MARIA CLARISSA L. PACIS-TRINIDAD, REGIONAL TRIAL COURT, BRANCH 36, IRIGA CITY,**[*] *Respondent*.

SYLLABUS

1. CIVIL LAW; SUCCESSION; RULES ON SUCCESSION; WILLS; KINDS THEREOF.— Generally, a person's death passes ownership over their properties to the heirs. When there is no will, or when there is one—but does not pass probate, the law provides for the order of succession and the amount of successional rights for each heir. When real properties are involved, law will also govern the formalities and consequences in the transfer of properties.

However, prior to death, a person retains control as to how their estate will be distributed. This is done by executing a written document referred to as a will.

Wills may be notarial or holographic. In either case, the formalities required for their execution is more elaborate than most deeds relating to other transfers of property.

2. ID.; ID.; ID.; ID.; REMEDIAL LAW; SPECIAL PROCEEDINGS; PROBATE PROCEEDINGS; PROBATE IS NECESSARY TO DETERMINE THE AUTHENTICITY OF A WILL.— Death makes it impossible for the decedent to testify as to the authenticity and due execution of the will, which contains their testamentary desires. The proof of the formalities

---

[*] Judge Maria Clarissa L. Pacis-Trinidad was impleaded as respondent on September 27, 2017. *See rollo*, p. 31.

substitutes as the legal guarantee to ensure that the document purporting to be a will is indeed authentic, and that it was duly executed by the decedent.

A will is then submitted to the Regional Trial Court for probate proceeding to determine its authenticity, as "no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court."

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; DISALLOWANCE OF A WILL; PROBATE PROCEEDINGS DEAL GENERALLY WITH THE EXTRINSIC VALIDITY OF A WILL.— The probate court can then disallow a will under any of the following circumstances enumerated (in Article 839) by the Civil Code: . . .

The disallowance list is likewise echoed in the Rule 76, Section 9 of the Rules of Special Proceedings: . . .

Thus, the extrinsic validity of the will refers to a finding by a trial court that all the formalities of either a holographic or notarial will have been sufficiently complied with, leading to the legal conclusion that the will submitted to probate is authentic and duly executed. *Dorotheo v. Court of Appeals* elaborates:

> It should be noted that probate proceedings deal[ ] generally with the extrinsic validity of the will sought to be probated, particularly on three aspects:
>
> - whether the will submitted is indeed, the decedent's last will and testament;
> - compliance with the prescribed formalities for the execution of wills;
> - the testamentary capacity of the testator;
> - and the due execution of the last will and testament.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; EXTRINSIC VALIDITY OF A WILL DISTINGUISHED FROM ITS INTRINSIC VALIDITY; THE PROBATE OF A WILL DOES NOT DELVE INTO ITS INTRINSIC VALIDITY UNLESS THERE ARE EXCEPTIONAL CIRCUMSTANCES.— The extrinsic validity of a will, that is, that the document purporting to be a will is determined to be authentic and duly executed by the decedent, is different from its intrinsic validity.

The intrinsic validity of the will "or the manner in which the properties were apportioned," refers to whether the order and allocation of successional rights are in accordance with law. It can also refer to whether an heir has not been disqualified from inheriting from the decedent.

. . .

. . . [T]he probate of a will only involves its extrinsic validity and does not delve into its intrinsic validity, unless there are exceptional circumstances which would require the probate court to touch upon the intrinsic validity of the will.

5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE EXTRINSIC VALIDITY OF A WILL IS GOVERNED BY THE LAW WHERE THE WILL WAS EXECUTED AND PRESENTED FOR PROBATE; FOREIGN LAWS, WHEN RELEVANT, MUST BE PROVEN AS A FACT BY EVIDENCE.— Generally, the extrinsic validity of the will, which is the preliminary issue in probate of wills, is governed by the law of the country where the will was executed and presented for probate. Understandably, the court where a will is presented for probate should, by default, apply only the law of the forum, as we do not take judicial notice of foreign laws.

This is the situation here. A Filipina who was subsequently naturalized as an American executed a will in the Philippines to pass real property found in the country. The designated executor now files a petition for probate in the Philippines.

. . .

When it comes to the form and solemnities of wills, which are part of its extrinsic validity, the Civil Code provides that the law of the country of execution shall govern: . . .

Even if we assume that the foreign law applies, it does not necessarily mean that the Philippine court loses jurisdiction. Foreign law, when relevant, must still be proven as a fact by evidence, as Philippine courts do not take judicial notice of foreign laws.

Courts, therefore, retain jurisdiction over the subject matter (probate) and the *res*, which is the real property in Iriga in this case.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE NATIONALITY PRINCIPLE; UNDER THIS PRINCIPLE, THE NATIONAL PERSONAL LAWS APPLY WHEN IT COMES TO SUCCESSION ISSUES AND THE INTRINSIC VALIDITY OF TESTAMENTARY PROVISIONS.— Respondent *motu proprio* dismissed the petition for probate, because it purportedly went against the nationality principle embodied in Article 16 of the Civil Code by not adhering to the required probate proceedings of Lipson's national law.

Respondent is mistaken.

The nationality principle is embodied in Article 15 of the Civil Code: . . .

The second paragraph of Article 16 of the Civil Code then provides that the national law of aliens shall regulate their personal rights: . . .

Under the nationality principle, Philippine laws continue to apply to Filipino citizens when it comes to their "family rights and duties . . . status, condition and legal capacity" even if they do not reside in the Philippines. In the same manner, the Philippines respects the national personal laws of aliens and defers to them when it comes to succession issues and "the intrinsic validity of testamentary provisions."

7. ID.; ID.; ID.; ID.; ID.; ID.; PROBATE OF AN ALIEN'S WILL; THE PHILIPPINE COURTS HAVE POWER TO PROBATE A WILL EXECUTED BY AN ALIEN, ESPECIALLY WHEN THE WILL PASSES REAL PROPERTY IN THE PHILIPPINES.— Articles 816 and 817 of the Civil Code provide for the probate of an alien's will. . . .

Article 816 covers a situation where the decedent was abroad when the will was executed. It provides that the will can be submitted for probate here in the Philippines, using either the law where the decedent resides or our own law. Article 816 of the Civil Code clearly made our own law applicable, as seen with the phrase "in conformity with those which this Code prescribes."

. . .

Article 817 provides that a will by an alien executed in the Philippines shall be treated as if it were executed according to

Philippine laws, if it was validly executed and accordingly could have been probated under the laws of the alien's country of nationality.

Further, Article 817 does not exclude the participation of Philippine courts in the probate of an alien's will, especially when the will passes real property in the Philippines. It provides an option to the heirs or the executor: to use Philippine law, or plead and prove foreign law. Thus, it does not remove jurisdiction from the Philippine court.

This option is clear from the clause "which might be proved and allowed by the law of his own country," which implies that either the alien's national law or Philippine law applies in the probate proceedings. Additionally, the clause "shall have the same effect as if executed in accordance with the laws of the Philippines" creates a fiction that foreign law if proven will have the same effect as Philippine law.

Clearly, as to the extrinsic validity of an alien's will, Articles 816 and 817 of the Civil Code both allow the application of Philippine law.

The power of our courts to probate a will executed by an alien is likewise apparent in Rule 73, Section 1 of the Rules of Special Proceedings, which provides that if the decedent is an inhabitant of a foreign country, their will may be proved in the Regional Trial Court of any province in which they had an estate: . . .

In *Palaganas*, this Court ruled that the trial court properly allowed the probate of an American citizen's will, which had not yet undergone probate in the alien decedent's country of nationality[.]

8. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE PHILIPPINE LAW ON THE FORMALITIES OF WILLS APPLIES IF THE FOREIGNER'S WILL COVERS ESTATE IN THE PHILIPPINES.— If an alien-decedent duly executes a will in accordance with the forms and solemnities required by Philippine law, barring any other defect as to the extrinsic validity of the will, the courts may take cognizance of the petition and allow the probate of the will.

> Wills of foreigners executed in the Philippines may be probated if they have estate in the Philippines, because probate of the properties can only be effected under Philippine law. . . .
>
> Here, Lipson's will was executed in Iriga City, Philippines, where she had real property. Thus, Philippine law on the formalities of wills applies. Assuming that Lipson executed the will in accordance with Philippine law, the Regional Trial Court did not lack jurisdiction over the petition.
>
> As respondent has yet to rule on the extrinsic validity of the will, it is proper that the petition be remanded to determine due compliance with the formalities prescribed by law, Lipson's testamentary capacity and voluntary execution of the will, and whether it was truly Lipson's last will and testament.

APPEARANCES OF COUNSEL

Ferdinand I. Diño for petitioner.

D E C I S I O N

LEONEN, *J.*:

The nationality principle is not applied when determining the extrinsic validity of an alien's last will and testament. When it comes to the probate of an alien's will, whether executed here or abroad, the alien's national law may be pleaded and proved before the probate court. Otherwise, Philippine law will govern by default.

This Court resolves a Petition[1] for review on *certiorari* under Rule 45 of the Rules of Court, assailing the October 6, 2016[2] and November 16, 2016[3] Orders of the Regional Trial Court of

---

[1] Id. at 3-8.

[2] Id. at 10-11. The Order docketed as Spec. Proc. No. IR-2919 was penned by Presiding Judge Maria Clarissa L. Pacis-Trinidad of Regional Trial Court Branch No. 36, Iriga City.

[3] Id. at 12-14. The Order was penned by Presiding Judge Maria Clarissa L. Pacis-Trinidad.

Iriga City, Branch 36, which *motu proprio* dismissed a petition for probate and issuance of letters testamentary.

On February 23, 2011, Luz Gaspe Lipson (Lipson), an American citizen temporarily residing in Iriga City, executed her last will and testament and designated Roel P. Gaspi (Gaspi) as executor.[4]

On October 17, 2015, at 70 years old, Lipson passed away due to lymphoma.[5]

On October 3, 2016, Gaspi filed a Petition[6] for the probate of Lipson's will and the issuance of letters testamentary without bond in his behalf.

On October 6, 2016, the Regional Trial Court[7] *motu proprio* dismissed the petition for probate for lack of jurisdiction.

The Regional Trial Court pointed out that Lipson was an American citizen. Thus, her national law must govern and her will must be probated in the United States of America, and not in the Philippines.[8]

The Regional Trial Court continued that it is only when Lipson's will is probated, according to her national law, that the Philippines may recognize and execute her will through a petition for recognition of foreign judgment.[9]

The dispositive portion of the Regional Trial Court Order read:

WHEREFORE, in view of the foregoing, the petition is *motu proprio* **DISMISSED**, without prejudice, for lack of jurisdiction over the subject matter of herein Court.

---

[4] Id. at 4.

[5] Id. at 21.

[6] Id. at 18-20.

[7] Id at 10-11.

[8] Id. at 10.

[9] Id. at 11.

SO ORDERED.[10] (Emphasis in the original)

Gaspi moved for reconsideration[11] of the Regional Trial Court Order, but his motion was denied on November 16, 2016.[12]

In denying the motion for reconsideration, the Regional Trial Court stated that the ruling in *Palaganas v. Palaganas*[13] was not applicable to Gaspi's petition. It continued that the jurisprudence cited in *Palaganas* involved the probate in the Philippines of an alien's will, which was executed abroad, while Lipson's will was executed in the Philippines.[14]

The dispositive portion of the Regional Trial Court Order reads:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by the petitioner is **DENIED** for lack of merit.

SO ORDERED.[15]

In the Petition[16] for review on *certiorari*, petitioner Gaspi contends that there is no prohibition under Philippine Law for the probate of wills executed by aliens. He adds that under the Civil Code, the will of an alien residing abroad is also recognized in the Philippines, if it is made in accordance with the laws of the alien's place of residence or country, or if done in conformity with Philippine Laws.[17]

Citing the ruling in *Palaganas*, petitioner pointed out that this Court has allowed the probate of a will executed by an alien abroad, even though it has not yet undergone probate in

---

[10] Id.

[11] Id. at 15-17.

[12] Id. at 12-14.

[13] 655 Phil. 535 (2011) [Per J. Abad, Second Division].

[14] *Rollo*, pp. 12-13.

[15] Id. at 14.

[16] Id. at 3-8.

[17] Id. at 6.

the alien decedent's country of citizenship or residence. Thus, he stresses that with more reason should an alien's will executed in the Philippines, in conformity with our law, be allowed to undergo probate.[18]

This Court then directed[19] respondent to comment on the petition.

In her Comment,[20] respondent stresses that the petition for probate was properly dismissed due to lack of jurisdiction.[21] She points out petitioner's admission that the decedent was an American citizen, yet Lipson's will was executed in accordance with Philippine Laws, contrary to the nationality principle.[22] Respondent states:

> Logic and reason dictate that this Court *a quo* cannot establish the extrinsic validity of a will in a testamentary succession of a foreigner, which must be based on his national law **and** executed in accordance with the formalities of the law of the country of which he is a citizen or subject. In view thereof, clearly herein Court *a quo* cannot take cognizance of the petition.[23] (Emphasis in the original)

Respondent likewise posits that petitioner's reliance on the ruling in *Palaganas* was misplaced, as it involved the probate of a will executed by an alien abroad, while in this case, the will was executed in the Philippines by an alien.[24] She opines that instead of Article 816 of the Civil Code, upon which *Palaganas* was based, the applicable provision was Article 817.[25]

---

[18] Id.

[19] Id. at 25.

[20] Id. at 26-28.

[21] Id. at 26.

[22] Id. at 26-27.

[23] Id. at 27.

[24] Id.

[25] Id. at 28.

In his Reply,[26] petitioner explains that the nationality principle adverted to by respondent in Article 16 of the Civil Code not only pertains to the decedent's internal law, but also to conflict of laws.[27]

Petitioner also states that there was no basis for respondent's statement that the probate of an alien's will in the Philippines was conditioned on its prior probate and acceptance in the alien's country of nationality or residence.[28]

The sole issue for this Court's resolution is whether or not the Regional Trial Court has the competence to take cognizance of an alien's will executed in the Philippines, even if it had not yet been probated before the alien decedent's national court.

I

Generally, a person's death passes ownership over their properties to the heirs.[29] When there is no will, or when there is one — but does not pass probate, the law provides for the order of succession and the amount of successional rights for each heir.[30] When real properties are involved, law will also govern the formalities and consequences in the transfer of properties.

---

[26] Id. at 40-43.

[27] Id. at 40.

[28] Id. at 41.

[29] CIVIL CODE, art. 777 provides:

ARTICLE 777. The rights to the succession are transmitted from the moment of the death of the decedent.

[30] CIVIL CODE, art. 960 provides:

ARTICLE 960. Legal or intestate succession takes place:

(1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;

(2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;

(3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place;

However, prior to death, a person retains control as to how their estate will be distributed. This is done by executing a written[31] document referred to as a will.[32]

Wills may be notarial[33] or holographic.[34] In either case, the formalities required for their execution is more elaborate than most deeds relating to other transfers of property.

---

(4) When the heir instituted is incapable of succeeding, except in cases provided in this Code.

[31] CIVIL CODE, art. 804 provides:

ARTICLE 804. Every will must be in writing and executed in a language or dialect known to the testator.

[32] CIVIL CODE, art. 783 provides:

ARTICLE 783. A will is an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of this estate, to take effect after his death.

[33] CIVIL CODE, arts. 805 and 806 provide:

ARTICLE 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

ARTICLE 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

[34] CIVIL CODE, arts. 810-814 provide:

Death makes it impossible for the decedent to testify as to the authenticity and due execution of the will, which contains their testamentary desires. The proof of the formalities substitutes as the legal guarantee to ensure that the document purporting to be a will is indeed authentic, and that it was duly executed by the decedent.

A will is then submitted to the Regional Trial Court for probate proceeding to determine its authenticity, as "no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court."[35] *Heirs of Lasam v. Umengan*[36] describes the probate proceeding:

ARTICLE 810. A person may execute a holographic will which must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed.

ARTICLE 811. In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. If the will is contested, at least three of such witnesses shall be required.

In the absence of any competent witness referred to in the preceding paragraph, and if the court deem it necessary, expert testimony may be resorted to.

ARTICLE 812. In holographic wills, the dispositions of the testator written below his signature must be dated and signed by him in order to make them valid as testamentary dispositions.

ARTICLE 813. When a number of dispositions appearing in a holographic will are signed without being dated, and the last disposition has a signature and a date, such date validates the dispositions preceding it, whatever be the time of prior dispositions.

ARTICLE 814. In case of any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature.

[35] CIVIL CODE, art. 838 provides:

ARTICLE 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.

To probate a will means to prove before some officer or tribunal, vested by law with authority for that purpose, that the instrument offered to be proved is the last will and testament of the deceased person whose testamentary act it is alleged to be, and that it has been executed, attested and published as required by law, and that the testator was of sound and disposing mind. It is a proceeding to establish the validity of the will." Moreover, the presentation of the will for probate is mandatory and is a matter of public policy.[37] (Citation omitted)

The probate court can then disallow a will under any of the following circumstances enumerated by the Civil Code:

ARTICLE 839. The will shall be disallowed in any of the following cases:

(1) If the formalities required by law have not been complied with;
(2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
(3) If it was executed through force or under duress, or the influence of fear, or threats;
(4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
(5) If the signature of the testator was procured by fraud;
(6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

The disallowance list is likewise echoed in the Rule 76, Section 9 of the Rules of Special Proceedings:

SECTION 9. Grounds for disallowing will. — The will shall be disallowed in any of the following cases:

(a) If not executed and attested as required by law;

The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.

[36] 539 Phil. 547 (2006) [Per J. Callejo, Sr., First Division].

[37] *Id.* at 560.

(b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;
(c) If it was executed under duress, or the influence of fear, or threats;
(d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
(e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

Thus, the extrinsic validity of the will refers to a finding by a trial court that all the formalities of either a holographic or notarial will have been sufficiently complied with, leading to the legal conclusion that the will submitted to probate is authentic and duly executed. *Dorotheo v. Court of Appeals*[38] elaborates:

It should be noted that probate proceedings deals generally with the extrinsic validity of the will sought to be probated, particularly on three aspects:

- whether the will submitted is indeed, the decedent's last will and testament;
- compliance with the prescribed formalities for the execution of wills;
- the testamentary capacity of the testator;
- and the due execution of the last will and testament.[39] (Citations omitted)

The extrinsic validity of a will, that is, that the document purporting to be a will is determined to be authentic and duly executed by the decedent, is different from its intrinsic validity.

The intrinsic validity of the will "or the manner in which the properties were apportioned,"[40] refers to whether the order and allocation of successional rights are in accordance with

---

[38] 377 Phil. 851 (1991) [Per J. Ynares-Santiago, First Division].

[39] *Id.* at 858.

[40] *Tanchanco v. Santos*, G.R. No. 204793, June 8, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66182> [Per J. Hernando, Second Division].

law. It can also refer to whether an heir has not been disqualified from inheriting from the decedent.

Generally, the extrinsic validity of the will, which is the preliminary issue in probate of wills, is governed by the law of the country where the will was executed and presented for probate.[41] Understandably, the court where a will is presented for probate should, by default, apply only the law of the forum, as we do not take judicial notice of foreign laws.[42]

This is the situation here. A Filipina who was subsequently naturalized as an American executed a will in the Philippines to pass real property found in the country. The designated executor now files a petition for probate in the Philippines.

Respondent *motu proprio* dismissed the petition for probate, because it purportedly went against the nationality principle embodied in Article 16 of the Civil Code by not adhering to the required probate proceedings of Lipson's national law.[43]

Respondent is mistaken.

The nationality principle is embodied in Article 15 of the Civil Code:

---

[41] CIVIL CODE, art. 17 provides:

ARTICLE 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

[42] *Corpuz v. Sto. Tomas*, 642 Phil. 420, 432 (2010) [Per J. Brion, Third Division].

[43] *Rollo*, p. 10.

ARTICLE 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

The second paragraph of Article 16 of the Civil Code then provides that the national law of aliens shall regulate their personal rights:

ARTICLE 16. Real property as well as personal property is subject to the law of the country where it is situated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.

Under the nationality principle, Philippine Laws continue to apply to Filipino citizens when it comes to their "family rights and duties . . . status, condition and legal capacity" even if they do not reside in the Philippines. In the same manner, the Philippines respects the national personal laws of aliens and defers to them when it comes to succession issues and "the intrinsic validity of testamentary provisions."

However, the probate of a will only involves its extrinsic validity and does not delve into its intrinsic validity, unless there are exceptional circumstances which would require the probate court to touch upon the intrinsic validity of the will.[44]

When it comes to the form and solemnities of wills, which are part of its extrinsic validity, the Civil Code provides that the law of the country of execution shall govern:

ARTICLE 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

---

[44] *Spouses Ajero v. Court of Appeals*, 306 Phil. 500, 509 (1994) [Per J. Puno, Second Division].

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

Even if we assume that the foreign law applies, it does not necessarily mean that the Philippine court loses jurisdiction. Foreign law, when relevant, must still be proven as a fact by evidence, as Philippine courts do not take judicial notice of foreign laws.[45]

Courts, therefore, retain jurisdiction over the subject matter (probate) and the *res*, which is the real property in Iriga in this case.

Moreso, there was no objection with respect to the jurisdiction of the Regional Trial Court. Thus, respondent committed grave abuse of discretion in *motu proprio* dismissing the case for lack of jurisdiction.

II

It was error on respondent's part to conclude that Philippine Law cannot be applied to determine the extrinsic validity of Lipson's will.

---

[45] RULES OF COURT, Rule 129, secs. 1 and 2 provide:

SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SECTION 2. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Articles 816 and 817 of the Civil Code provide for the probate of an alien's will. Article 816 reads:

ARTICLE 816. The will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.

Article 816 covers a situation where the decedent was abroad when the will was executed. It provides that the will can be submitted for probate here in the Philippines, using either the law where the decedent resides or our own law. Article 816 of the Civil Code clearly made our own law applicable, as seen with the phrase "in conformity with those which this Code prescribes."

On the other hand, Article 817 states:

ARTICLE 817. A will made in the Philippines by a citizen or subject of another country, which is executed in accordance with the law of the country of which he is a citizen or subject, and which might be proved and allowed by the law of his own country, shall have the same effect as if executed according to the laws of the Philippines.

Article 817 provides that a will by an alien executed in the Philippines shall be treated as if it were executed according to Philippine laws, if it was validly executed and accordingly could have been probated under the laws of the alien's country of nationality.

Further, Article 817 does not exclude the participation of Philippine courts in the probate of an alien's will, especially when the will passes real property in the Philippines. It provides an option to the heirs or the executor: to use Philippine law, or plead and prove foreign law. Thus, it does not remove jurisdiction from the Philippine court.

This option is clear from the clause "which might be proved and allowed by the law of his own country," which implies that either the alien's national law or Philippine law applies in the probate proceedings. Additionally, the clause "shall have the same effect as if executed in accordance with the laws of

the Philippines" creates a fiction that foreign law if proven will have the same effect as Philippine law.

Clearly, as to the extrinsic validity of an alien's will, Articles 816 and 817 of the Civil Code both allow the application of Philippine law.

The power of our courts to probate a will executed by an alien is likewise apparent in Rule 73, Section 1 of the Rules of Special Proceedings, which provides that if the decedent is an inhabitant of a foreign country, their will may be proved in the Regional Trial Court of any province in which they had an estate:

> SECTION 1. *Where estate of deceased persons settled.* — If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

In *Palaganas*, this Court ruled that the trial court properly allowed the probate of an American citizen's will, which had not yet undergone probate in the alien decedent's country of nationality:

> But our laws do not prohibit the probate of wills executed by foreigners abroad although the same have not as yet been probated and allowed in the countries of their execution. A foreign will can be given legal effects in our jurisdiction. Article 816 of the Civil Code states that the will of an alien who is abroad produces effect in the Philippines if made in accordance with the formalities prescribed by the law of the place where he resides, or according to the formalities observed in his country.

In this connection, Section 1, Rule 73 of the 1997 Rules of Civil Procedure provides that if the decedent is an inhabitant of a foreign country, the RTC of the province where he has an estate may take cognizance of the settlement of such estate. Sections 1 and 2 of Rule 76 further state that the executor, devisee, or legatee named in the will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.

Our rules require merely that the petition for the allowance of a will must show, so far as known to the petitioner: (a) the jurisdictional facts; (b) the names, ages, and residences of the heirs, legatees, and devises of the testator or decedent; (c) the probable value and character of the property of the estate; (d) the name of the person for whom letters are prayed; and (e) if the will has not been delivered to the court, the name of the person having custody of it. *Jurisdictional facts* refer to the fact of death of the decedent, his residence at the time of his death in the province where the probate court is sitting, or if he is an inhabitant of a foreign country, the estate he left in such province. *The rules do not require proof that the foreign will has already been allowed and probated in the country of its execution.*[46] (Emphasis supplied, citations omitted)

If an alien-decedent duly executes a will in accordance with the forms and solemnities required by Philippine law, barring any other defect as to the extrinsic validity of the will, the courts may take cognizance of the petition and allow the probate of the will.

Wills of foreigners executed in the Philippines may be probated if they have estate in the Philippines, because probate of the properties can only be effected under Philippine law. In *Johannes v. Harvey*,[47] this Court held:

It is often necessary to have more than one administration of an estate. When a person dies intestate owning property in the country

[46] *Palaganas v. Palaganas*, 655 Phil. 535, 539-540 (2011) [Per J. Abad, Second Division].

[47] 43 Phil. 175 (1922) [Per J. Malcolm, En Banc].

of his domicile as well as in a foreign country, administration is had in both countries. That which is granted in the jurisdiction of decedent's last domicile is termed the principal administration, while any other administration is termed the ancillary administration. The reason for the latter is because a grant of administration does not *ex proprio vigore* have any effect beyond the limits of the country in which it is granted. Hence, an administrator appointed in a foreign state has no authority in the United States. The ancillary administration is proper, wherever a person dies, leaving in a country other than that of his last domicile, property to be administered in the nature of assets of the decedent, liable for his individual debts or to be distributed among his heirs. . . .[48] (Citations omitted)

Here, Lipson's will was executed in Iriga City, Philippines, where she had real property. Thus, Philippine Law on the formalities of wills applies. Assuming that Lipson executed the will in accordance with Philippine law, the Regional Trial Court did not lack jurisdiction over the petition.

As respondent has yet to rule on the extrinsic validity of the will, it is proper that the petition be remanded to determine due compliance with the formalities prescribed by law, Lipson's testamentary capacity and voluntary execution of the will, and whether it was truly Lipson's last will and testament.

WHEREFORE, the Petition is **GRANTED**. The assailed Orders dated October 6, 2016 and November 6, 2016 of the Regional Trial Court of Iriga City, Branch 36 in Spec. Proc. No. IR-2919 are **REVERSED** and **SET ASIDE**. The case is remanded to the Regional Trial Court for further proceedings in accordance with this Decision.

SO ORDERED.

Hernando, Inting, and *Rosario, JJ.*, concur.

Delos Santos, J., on official leave.

---

[48] *Id.* at 177-178 (1922).

SECOND DIVISION

[G.R. No. 230016. November 23, 2020]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **PHILEX MINING CORPORATION,** *Respondent*.

SYLLABUS

1. TAXATION; INCOME TAXATION; REFUND OR TAX CREDIT OF INPUT TAX; CONDITIONS UNDER WHICH A TAXPAYER ENGAGED IN ZERO-RATED SALES MAY APPLY FOR THE ISSUANCE OF A TAX CREDIT CERTIFICATE, OR REFUND OF EXCESS INPUT TAX DUE OR PAID, ATTRIBUTABLE TO THE SALE.— Under Section 112 (A), a taxpayer engaged in zero-rated sales may apply for the issuance of a tax credit certificate, or refund of excess input tax due or paid, attributable to the sale, subject to the following conditions: (1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax;and (5) in case of zero-rated sales under Section 106 (A)(2)(a)(1), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations.

2. ID.; ID.; ID.; ID.; STATUTORY CONSTRUCTION; PLAIN MEANING RULE; UNDER THE SAID RULE, SUBSIDIARY JOURNALS AND MONTHLY VAT DECLARATIONS CANNOT BE REGARDED AS PART OF THE SUBSTANTIATION REQUIREMENTS FOR TAX REFUND OR CREDIT.— It is elementary rule in statutory construction that when the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. The plain-meaning rule or *verba legis*, expressed in the maxim *index animi sermo*, or speech is the index of intention, rests on the valid presumption that the words employed by the legislature in a statute correctly

express its intention or will, and preclude the court from construing it differently. *Verba legis non est recedendum.* From the words of a statute there should be no departure. Furthermore, every part of the statute must be interpreted with reference to the context, *i.e.* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.

Guided by the foregoing principles, we see no reason to depart from the findings and conclusion of the CTA. As the CTA aptly held, and as will be discussed below, there was nothing in the Tax Code or in RR No. 16-2005 that would suggest that the subsidiary journals and monthly VAT declarations are part of the substantiation requirements that must be complied with to support a claim for tax refund or credit.

3. ID.; ID.; ID.; ID.; INVOICING REQUIREMENTS OF CREDITABLE INPUT TAXES; NON-COMPLIANCE WITH THE INVOICING REQUIREMENTS IS A GROUND TO DENY A CLAIM FOR TAX CREDIT OR REFUND.— [I]mportation of non-capital goods must be evidenced by import entry declarations or any equivalent document; and the domestic purchase of services, by VAT official receipts showing: (1) that the seller is a VAT-registered person; (2) the Tax Identification Number (TIN) of the seller; (3) the word "zero-rated sale" was written or printed prominently on the receipt in case of zero-rated sales; (4) the date of transaction, nature of service, as well as the name, business style, if any, and address of the purchaser; and (5) the TIN of the purchaser. Case law states that failure to comply with the *invoicing requirements* is sufficient ground to deny the claim for refund or tax credit. Too, Revenue Memorandum Circular No. 42-2003 only provides for non-compliance with the *invoicing requirements* as a ground for denial of the claim for refund or credit.

4. ID.; ID.; ID.; ID.; ID.; STATUTORY CONSTRUCTION; COURTS CANNOT, IN THE GUISE OF INTERPRETATION, INCLUDE SOMETHING THAT IS NOT PROVIDED OR INTENDED BY THE LAWMAKERS, SUCH AS SUBSIDIARY JOURNALS, WHICH ARE NOT REQUIRED FOR THE INPUT TAXES TO BE CREDITABLE.— The language used in Section 110 is plain, clear, and unambiguous. To be creditable, the input taxes must

be evidenced by validly issued invoices and/or official receipts containing the information enumerated in Sections 113 and 237. The law does not require that subsidiary journals where the sales and purchases (and the output taxes and their corresponding input taxes) were recorded, are also kept. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. To do so would be to do violence to the language of the law and to invade the legislative sphere.

5. ID.; ID.; ID.; ID.; ID.; THE FAILURE TO PAY VALUE-ADDED TAX (VAT)EVERY MONTH DOES NOT AFFECT THE TAXPAYER'S ENTITLEMENT TO REFUND AS LONG AS THE VAT HAS BEEN SHOWN TO HAVE BEEN PAID.— [T]here was nothing in Section 112 (A) and RR No. 16-2005 that require prior filing of monthly VAT declarations as a condition precedent to the entitlement for refund. While admittedly, Section 114 (A) of the Tax Code, as implemented by Section 4.114-1 of RR No. 16-2005, requires the taxpayer to pay VAT on a monthly basis, the Tax Code and relevant revenue regulations do not provide denial of the claim as a consequence of non-compliance. The failure to pay VAT every month may give rise to the payment of penalties, but it does not affect the taxpayer's entitlement to its claim for refund as long as it has sufficiently shown that the VAT has in fact been paid. Here, the CTA examined the voluminous documents submitted by Philex Mining and concluded that Philex Mining sufficiently proved payment of creditable input VAT for the second and third quarters of TY 2010.

6. ID.; ID.; ID.; STATUTORY CONSTRUCTION; TAX STATUTES; WHILE TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS AND ARE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE TAXPAYER, TAX STATUTES SHALL BE CONSTRUED STRICTLY AGAINST THE TAXING AUTHORITY AND LIBERALLY IN FAVOR OF THE TAXPAYER.—Philex Mining's failure to maintain subsidiary sales and purchase journals or to file the monthly VAT declarations should not result in the **outright** denial of its claim for refund or credit of unutilized input VAT attributable to its zero-rated sales. These are not part of the requirements for Philex Mining to be entitled thereto. Section 112 (A) of the Tax Code is very clear; no construction

or interpretation is needed. The Court may not construe a statute that is free from doubt; neither can we impose conditions or limitations when none is provided for. While tax refunds are in the nature of tax exemptions and are construed *strictissimi juris* against the taxpayer, tax statutes shall be construed strictly against the taxing authority and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the statute expressly and clearly declares.

7. ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES; WHETHER AN INPUT TAX ATTRIBUTABLE TO ZERO-RATED SALES IS CREDITABLE INVOLVES A FACTUAL ISSUE THAT CANNOT BE ENTERTAINED IN A RULE 45 PETITION.— [T]he CIR's allegation that Philex Mining failed to prove its creditable input tax attributable to its zero-rated sales necessarily involves factual issue and, thus, is evidentiary in nature which cannot be entertained in the present petition where only questions of law may be generally raised. The Court is not a trier of facts; it is not our duty to look into the documents submitted during trial in order to test the truthfulness of their contents. Besides, the findings of fact of the CTA, which, by the very nature of its functions, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, are generally regarded as final, binding, and conclusive upon this Court. The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion. Here, we find no cogent reason to depart from this general principle.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
T.A. Tejada for respondent.

D E C I S I O N

LOPEZ, *J.*:

While the tax law requires mandatory compliance with the keeping of subsidiary journals and the filing of monthly value-added tax (VAT) declarations, the Court will not deny the request for refund on the sole basis that the taxpayer failed to comply with these requirements when the law does not provide for its compliance by the taxpayer to be entitled for refund. The Court may not construe a statute that is free from doubt; neither can we impose conditions or limitations when none is provided for.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court seeks to set aside the Decision[3] dated October 19, 2016 and Resolution[4] dated February 14, 2017 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1334, which affirmed the CTA Division's Decision[5] dated March 31, 2015 and Resolution[6] dated June 24, 2015 in CTA Case Nos. 8553 and 8562, ordering the Commissioner of Internal Revenue (CIR)

---

[1] *Commissioner of Internal Revenue v. American Express International, Inc.*, 500 Phil. 586, 608 (2005).

[2] *Rollo*, pp. 15-27.

[3] *Id.* at 31-44; penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban.

[4] *Id.* at 46-48; penned by Associate Justice Esperanza R. Fabon-Victorino, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan.

[5] *Id.* at 50-79; penned by Associate Justice Amelia R. Cotangco-Manalastas, with the concurrence of Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova.

[6] *Id.* at 81-84.

to refund in favor of Philex Mining Corporation (Philex Mining) the amount of ₱51,734,898.99, representing its unutilized input VAT attributable to its zero-rated sales for the second and third quarters of the taxable year (TY) 2010.

ANTECEDENTS

Philex Mining is a domestic corporation engaged in the mining business, such as the exploration and operation of mining properties and the commercial production, marketing, and exportation of mineral products.[7] It is a VAT-registered taxpayer with duly approved Application for Zero-Rate effective April 12, 1998.[8] During the second and third quarters of TY 2010, Philex Mining sold and shipped mineral products to Pan Pacific Copper Co., Ltd., Louise Dreyfus Commodities Metals Suisse SA, and Heraeus Ltd.[9]

On February 13, 2012, Philex Mining filed its amended quarterly VAT returns for the second and third quarters to reflect excess input tax arising from its zero-rated sales.[10] On June 7, 2012 and June 22, 2012, it filed claims for refund of ₱45,048,921.68 and ₱51,464,383.81 with the Department of Finance's One-Stop Shop Center (DOF-OSS) and attached to the Claimant Information Sheet Nos. 62442 and 22002, the letters dated May 4, 2012, containing a list of documents to support its claims.[11]

Thereafter, Philex Mining filed two (2) separate petitions for review before the CTA Division on October 9, 2012 (docketed as CTA Case No. 8553) and on October 25, 2012 (docketed as CTA Case No. 8562).[12] The Court granted the motions to consolidate the two (2) cases and to commission an Independent

---

[7] *Id.* at 50-51, and 55.

[8] *Id.* at 51.

[9] *Id.* at 67.

[10] *Id.* at 51-52.

[11] *Id.* at 52.

[12] *Id.*

Certified Public Accountant (ICPA) on February 14, 2013.[13] Thereafter, trial ensued.

Ruling of the CTA

On March 31, 2015, the CTA Division partly granted Philex Mining's petitions.[14] It held that Philex Mining timely filed its administrative and judicial claims for a refund within the period prescribed under Section 112 (A) and (C) of the 1997 National Internal Revenue Code (NIRC), as amended[15] (Tax Code), and that it attached to the Claimant Information Sheets the required documents to support its claims. The CTA Division examined the pieces of documentary evidence submitted by Philex Mining and evaluated the report issued by the ICPA, and concluded that Philex Mining sufficiently proved its entitlement to a refund for its unutilized input VAT attributable to its zero-rated sales for the second and third quarters of TY 2010, but in the reduced amount of ₱51,734,898.99. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, [the Commissioner of Internal Revenue] is hereby **ORDERED** to **REFUND** in favor of [Philex Mining Corporation] the amount of ₱51,734,898.99, representing its unutilized and excess input VAT attributable to its zero-rated sales for the second and third quarter[s] of 2010.
>
> **SO ORDERED**.[16] (Emphases in the original.)

The CIR moved for reconsideration alleging that the judicial claim for refund was premature, Philex Mining did not submit to the DOF-OSS the required checklist of documents, and Philex Mining failed to comply with the accounting requirements, specifically the keeping of subsidiary sales journal and subsidiary purchase journal, and the filing of monthly VAT declarations.

---

[13] *Rollo*, p. 54.

[14] *Supra* note 5.

[15] Value-Added Tax (VAT) Reform Act, as amended by Republic Act No. 9337; approved on May 24, 2005.

[16] *Rollo*, p. 78.

On June 24, 2015, the CTA Division denied the CIR's motion for reconsideration for lack of merit.[17] The CTA Division reiterated that the judicial claim was timely filed and that Philex Mining submitted complete documents to support its claims. As regards non-compliance with the accounting requirements, the CTA Division held that there was nothing in Section 112 (A) of the Tax Code that required the presentation of subsidiary journals or the filing of monthly VAT declarations so that the taxpayer may be entitled to a refund or the issuance of tax credit certificate of its claimed excess input tax.

Discontented, the CIR appealed to the CTA *En Banc* reiterating the arguments raised in his motion for reconsideration filed with the CTA Division. On October 19, 2016, the CTA *En Banc* affirmed the CTA Division's findings and conclusion and disposed:[18]

WHEREFORE, the Petition for Review filed by [the] Commissioner of Internal Revenue on August 5, 2015, is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated March 31, 2015 and June 24, 2015, respectively promulgated by [the] Court in Division in CTA Case Nos. 8553 & 8562, are hereby **AFFIRMED**.

SO ORDERED.[19] (Emphases in the original.)

Failing at reconsideration,[20] the CIR, through the Office of the Solicitor General, filed the instant petition with this Court, raising the sole issue:

---

[17] *Supra* note 6. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED. *Id.* at 84. (Emphases in the original.)

[18] *Supra* note 3.

[19] *Rollo*, p. 43.

[20] *Supra* note 4. The dispositive portion of the Resolution reads:

WHEREFORE, the Motion for Reconsideration filed by [the] Commissioner of Internal Revenue on November 16, 2016 is hereby **DENIED**, for lack of merit.

SO ORDERED. *Id.* at 48. (Emphases in the original.)

CONTRARY TO THE FINDINGS OF THE CTA *EN BANC*, TAX DECLARATIONS AND SUBSIDIARY JOURNALS FORM PART OF THE REQUIREMENTS OF THE LAW FOR THE GRANT OF TAX CREDIT OR REFUND, AND IT IS THE OBLIGATION OF RESPONDENT TO PROVE COMPLIANCE THERETO.[21]

RULING

The petition is bereft of merit.

First off, it is not disputed that Philex Mining was engaged in zero-rated export sales under Section 106 (A) (2) (a) (1)[22] of the Tax Code and that it imported goods other than capital goods and purchased services in relation to such sales for the second and third quarters of TY 2010.[23]

Under Section 112 (A),[24] a taxpayer engaged in zero-rated sales may apply for the issuance of a tax credit certificate, or refund of excess input tax due or paid, attributable to the sale,

---

[21] *Rollo*, p. 20.

[22] SEC. 106. *Value-Added Tax on Sale of Goods or Properties*. —
(A) Rate and Base of Tax. — x x x
x x x x x x x x x
(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
(a) *Export Sales*. — The term '*export sales*' means:
(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
x x x x x x x x x

[23] *Rollo*, pp. 62-64, 73.

[24] SEC. 112. *Refunds or Tax Credits of Input Tax*. —
(A) *Zero-Rated or Effectively Zero-Rated Sales*. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output

subject to the following conditions: (1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax;[25] and (5) in case of zero-rated sales under Section 106 (A) (2) (a) (1), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations.[26]

The issue hinges on the fourth requisite.

The CIR posits that Philex Mining did not comply with the requirement of Section 4.113-3[27] of Revenue Regulations (RR) No. 16-2005[28] to keep, preserve, and maintain subsidiary sales and purchase journals. Likewise, Philex Mining failed to prove that it filed the monthly VAT declarations required under Section 114 (A)[29] of the Tax Code, as implemented by Section 4.114-

---

tax: [*Provided*], *however*, That in the case of zero-rated sales under Section 106 (A) (2) (a) (1) x x x, the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): x x x.

[25] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[26] *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, 640 Phil. 613, 617 (2010).

[27] SEC. 4.113-3. *Accounting Requirements*. — Notwithstanding the provisions of Sec. 233, all persons subject to VAT under Sec. 106 and 108 of the Tax Code shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which every sale or purchase on any given day is recorded. The subsidiary journal shall contain such information as may be required by the Commissioner of Internal Revenue.

x x x x x x x x x

[28] Consolidated Value-Added Tax Regulations of 2005 dated September 1, 2005.

[29] SEC. 114. *Return and Payment of Value-Added Tax*. —

1[30] of RR No. 16-2005. The CIR opines that prior compliance with these requirements is a condition *sine qua non* in claiming unutilized zero-rated input VAT because the subsidiary journals and monthly VAT declarations will assist the CIR and the courts in determining whether Philex Mining incurred input taxes in connection with its zero-rated sales and whether the input taxes were not applied against any output tax liability.[31]

The CIR is mistaken.

It is elementary rule in statutory construction that when the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[32] The plain-meaning rule or *verba legis*, expressed in the maxim *index animi sermo*, or speech is the index of intention, rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently.[33]

(A) *In General*. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.

x x x x x x x x x

[30] SEC. 4.114-1. *Filing of Return and Payment of VAT*. —

(A) Filing of Return. — x x x

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter.

x x x x x x x x x

The monthly VAT Declarations (BIR Form 2550M) of taxpayers whether large or non-large shall be filed and the taxes paid not later than the 20th day following the end of each month.

[31] *Rollo*, p. 24.

[32] *Philippine Amusement and Gaming Corp. (PAGCOR) v. Philippine Gaming Jurisdiction, Inc. (PEJI)*, 604 Phil. 547, 553 (2009).

[33] *Id.*

Verba legis non est recedendum. From the words of a statute there should be no departure. Furthermore, every part of the statute must be interpreted with reference to the context, *i.e.* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[34]

Guided by the foregoing principles, we see no reason to depart from the findings and conclusion of the CTA. As the CTA aptly held, and as will be discussed below, there was nothing in the Tax Code or in RR No. 16-2005 that would suggest that the subsidiary journals and monthly VAT declarations are part of the substantiation requirements that must be complied with to support a claim for tax refund or credit.[35]

Under Section 110 (A)[36] of the Tax Code, creditable input taxes must be evidenced by a VAT invoice or official receipt, which must, in turn, be issued in accordance with Sections 113[37]

---

[34] *Paras v. COMELEC*, 332 Phil. 56, 63, (1996).

[35] See *rollo*, pp. 83-84.

[36] SEC. 110. *Tax Credits*. —
(A) *Creditable Input Tax*. —
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
x x x x x x x x x

[37] SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons*. —
(A) *Invoicing Requirements*. — A VAT-registered person shall issue:
(1) A VAT invoice for every sale, barter or exchange of goods or properties; and
(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
(B) *Information Contained in the VAT Invoice or VAT Official Receipt*. — The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:

and 237.[38] Related to these provisions, Sections 4.110-8, 4.113-1 (A) and (B) of RR No. 16-2005 enumerate the documents required and information that must appear on the face of the official receipt, to substantiate the input tax on importation of goods other than capital goods and on domestic purchases of services, *viz.*:

SEC. 4.110-8. *Substantiation of Input Tax Credits.* —

(a) **Input taxes for the importation of goods or the domestic purchase** of goods, properties or **services** is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, **must be substantiated and supported by the following documents**, x x x:

(1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.

x x x x x x x x x

(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

x x x x x x x x x

(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt;

x x x x x x x x x

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; x x x.

x x x x x x x x x

[38] SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That where the receipt is issued to cover payment made as rentals, commissions, compensation or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

x x x x x x x x x

(4) For the purchase of services — official receipt **showing the information required under Secs. 113 and 237** of the Tax Code.

x x x x x x x x x

SEC. 4.113-1. *Invoicing Requirements*. —

(A) A VAT-registered person shall issue: —

x x x x x x x x x

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or VAT official receipt. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

x x x x x x x x x

(B) **Information contained in VAT invoice or VAT official receipt**. — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; Provided, That:

x x x x x x x x x

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt[.] x x x. (Emphases supplied.)

From the foregoing, it is apparent that importation of non-capital goods must be evidenced by import entry declarations or any equivalent document; and the domestic purchase of services, by VAT official receipts showing: (1) that the seller is a VAT-registered person; (2) the Tax Identification Number (TIN) of the seller; (3) the word "zero-rated sale" was written or printed prominently on the receipt in case of zero-rated sales;

(4) the date of transaction, nature of service, as well as the name, business style, if any, and address of the purchaser; and (5) the TIN of the purchaser.[39] Case law states that failure to comply with the *invoicing requirements* is sufficient ground to deny the claim for refund or tax credit.[40] Too, Revenue Memorandum Circular No. 42-2003[41] only provides for non-compliance with the *invoicing requirements* as a ground for denial of the claim for refund or credit, *viz.*:

> Q- 13: Should penalty be imposed on TCC application for failure of claimant to comply with certain **invoicing requirements**, (*e.g.*, sales invoices must bear the TIN of the seller)?
>
> A- 13: Failure by the supplier to comply with the **invoicing requirements** on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.
>
> If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the **invoicing requirements** in the issuance of sales invoices (*e.g.*, failure to indicate the TIN), its claim for tax credit/ refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. x x x. (Emphases supplied.)

The reason for strict compliance with invoicing requirements is only a "VAT invoice/official receipt" can give rise to any input tax from domestic purchase of goods or service.[42] Without

---

[39] See Section 237 of the Tax Code.

[40] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue*, 693 Phil. 464, 472 (2012).

[41] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters; dated July 15, 2003.

[42] See *Microsoft Phils., Inc. v. Commissioner of Internal Revenue*, 662 Phil. 762, 769 (2011).

input tax, there is nothing to refund. On the other hand, the particulars recorded in the subsidiary journals do not affect the character of an invoice or receipt as a "VAT invoice/official receipt." A taxpayer's books of accounts include the journal and the ledger and their subsidiaries, or their equivalents.[43] The general journal is a book of original entry in which the transactions affecting the taxpayer's business are recorded consecutively day by day as they occur.[44] It is a chronological, or date order, record of the transactions of a business. The general journal may consist of several books such as sales book, purchase book, cash book, and such other books as the taxpayer may find convenient for his business.[45] A subsidiary sales journal is a repository of day-to-day sales, while a subsidiary purchase journal records all purchases. Evidently, subsidiary journals may be sources of information from which the CIR may utilize in making assessments[46] but their submission is not indispensable to substantiate the input taxes.

The language used in Section 110 is plain, clear, and unambiguous. To be creditable, the input taxes must be evidenced by validly issued invoices and/or official receipts containing the information enumerated in Sections 113 and 237. The law does not require that subsidiary journals where the sales and purchases (and the output taxes and their corresponding input taxes) were recorded, are also kept. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. To do so would be to do violence to the language of the law and to invade the legislative sphere.[47]

---

[43] Bookkeeping Regulations, Revenue Regulations No. V-1 (As Amended), Sec. 2, par. 2; dated March 17, 1947.

[44] Bookkeeping Regulations, Revenue Regulations No. V-1 (As Amended), Sec. 2, par. 4; dated March 17, 1947.

[45] Bookkeeping Regulations, Revenue Regulations No. V-1 (As Amended), Sec. 4; dated March 17, 1947.

[46] See *Commissioner of Internal Revenue v. Philex Mining Corp.*, G.R. No. 233942 (Notice), February 21, 2018.

[47] *Canet v. Mayor Decena*, 465 Phil. 325, 333 (2004).

In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue*[48] (*Western Mindanao Power Corp.*), the Court held that "[t]he taxpayer claiming the refund must x x x comply with the invoicing **and accounting requirements** mandated by the NIRC, as well as by revenue regulations implementing them."[49] We reiterated this rule in *Bonifacio Water Corp. v. Commissioner of Internal Revenue*[50] (*Bonifacio*), and most recently, in *Sitel Phils. Corp. v. Commissioner of Internal Revenue*[51] (*Sitel*). This pronouncement, however, cannot support the CIR's position that prior compliance with the *accounting requirements* under Section 4.113-3 of RR No. 16-2005 is a condition precedent to the claim for refund or credit. In all these cases, the taxpayer's failure to maintain subsidiary journals was not raised as an issue.

In *Western Mindanao Power Corp.*, the CTA denied the taxpayer's claim for a refund because the taxpayer's official receipts do not contain the word "zero-rated." In sustaining the CTA, we ruled that the failure to print the phrase "zero-rated" on the VAT official receipts was fatal to the claim for refund of input VAT on zero-rated sales.

> In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. Hence, the mere fact that petitioner's application for zero-rating has been approved by the CIR does not, by itself, justify the grant of a refund or tax credit. **The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them**.
>
> x x x x x x x x x

---

[48] 687 Phil. 328 (2012).

[49] *Id.* at 340.

[50] 714 Phil. 413 (2013).

[51] 805 Phil. 464 (2017).

In fact, this Court has consistently held as fatal the failure to print the word "zero-rated" on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. Clearly then, the present Petition must be denied.[52] (Emphasis supplied.)

In *Bonifacio*, the taxpayer indicated in its official receipts a name not approved by the Securities and Exchange Commission (SEC). The Court ruled that the absence of official receipts issued in a name approved and authorized by the SEC was tantamount to non-compliance with the substantiation requirements under the law. Thus:

From the foregoing, it is clear that petitioner must show satisfaction of all the documentary and evidentiary requirements before an administrative claim for refund or tax credit will be granted. **Perforce, the taxpayer claiming the refund must comply with the invoicing and accounting requirements mandated by the Tax Code, as well as the revenue regulations implementing them**.

Thus, the change of petitioner's name to "Bonifacio GDE Water Corporation," being unauthorized and without approval of the SEC, and the issuance of official receipts under that name which were presented to support petitioner's claim for tax refund, cannot be used to allow the grant of tax refund or issuance of a tax credit certificate in petitioner's favor. The absence of official receipts issued in its name is tantamount to non-compliance with the substantiation requirements provided by law and, hence, the CTA En Banc's partial grant of its refund on that ground should be upheld.[53] (Emphasis supplied; citation omitted.)

Meanwhile, the invoices and official receipts issued by the taxpayer-claimant in *Sitel* were not imprinted with its TIN followed by the word "VAT." We ruled that the invoices and official receipts cannot be considered as VAT invoices or official receipts that would give rise to any creditable input VAT in favor of Sitel.

---

[52] *Supra* note 48, at 340-341.

[53] *Supra* note 50.

The CTA Division also did not err when it denied the amount of ₱2,668,852.55, allegedly representing input taxes claimed on Sitel's domestic purchases of goods and services which are supported by invoices/receipts with pre-printed TIN-V. **In *Western Mindanao Power Corp. v. Commissioner of Internal Revenue,* the Court ruled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon, as required by Section 4.108-1 of RR 7-95**.

x x x x x x x x x

In the same vein, considering that the subject invoice/official receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT in favor of Sitel.[54] (Emphasis supplied; citations omitted.)

In the foregoing cases, the issue was limited to non-compliance with the invoicing requirements. The Court's statement that accounting requirements must be complied with in addition to the invoicing requirements to entitle the claimant for refund or credit is, at best, merely an *obiter dictum* that is not binding as a precedent. An *obiter dictum* is an opinion expressed by a court upon some question of law, which is not necessary to the decision of the case before it. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument.[55]

---

[54] *Supra* note 51, at 485-487.

[55] *Villanueva, Jr. v. CA*, 429 Phil. 194, 202 (2002); *Delta Motors Corp. v. CA*, G.R. No. 121075, July 24, 1997, 342 Phil. 173, 186 (1997).

Likewise, the CIR's reliance on *Taganito Mining Corp. v. Commissioner of Internal Revenue*[56] is misplaced. In that case, Taganito was asking for the refund of input tax related to its importation of dump trucks, which it claimed to be a capital good. In denying the refund, the Court explained:

> Assuming *arguendo* that Taganito had submitted the valid import entries, its claim would still fail. Its claim of refund of input VAT relates to its importation of dump trucks, allegedly a purchase of capital goods. In this regard, Sections 4.110-3 and 4.113-3 of R.R. No. 16-05, as amended by R.R. No. 4-2007, provide:
>
> SECTION 4.110-3. Claim for Input Tax on Depreciable Goods. — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds one million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:
>
> (a) If the estimated useful life of a capital good is five (5) years or more. — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.
>
> (b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of a capital good. The claim for input tax credit shall commence in the month that the capital goods were acquired.
>
> Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (₱1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

---

[56] 748 Phil. 774 (2014).

Capital goods or properties refers to goods or properties with estimated useful life greater than 1 year and which are treated as depreciable assets under Sec. 34(F) of the tax Code, used directly or indirectly in the production or sale of taxable goods or services.

x x x x x x x x x

SECTION 4.113-3. Accounting Requirements. — x x x

A subsidiary record in ledger form shall be maintained for the acquisition, purchase or importation of depreciable assets or capital goods which shall contain, among others, information on the total input tax thereon as well as the monthly input tax claimed in VAT declaration or return. (Emphases in the original.)

Taganito argues that the report of the independent CPA shows that purchases and input VAT paid/incurred were properly recorded in its books of accounts. In addition, it avers that the Balance Sheet in its 2006 Audited Financial Statements showing an account item for property and equipment under its non-current assets indicates that details are found on Note 7 on page 19 of the Notes to Financial Statements, which provide the complete details of its subsidiary ledger. It also alleges that the pertinent IERIDs were reviewed by the independent CPA and they clearly state that the items imported were dump trucks, and that its Vice-President for Finance testified what consists of its purchases of capital goods.

These arguments cannot be given credence.

First, Taganito failed to prove that the importations pertaining to the input VAT are in the nature of capital goods and properties as defined in [Sections 4.110-3 and 4.113-3]. It points to the report of the independent CPA which allegedly reviewed the IERIDs and subsidiary ledger containing the description of the dump trucks. Nonetheless, the petitioner failed to present the actual IERIDs and subsidiary ledger, which would constitute the best evidence rather than a report merely citing them. It did not give any reason either to explain its failure to present these documents. The testimony of its Vice-President for Finance would be insufficient to prove the nature of the importation without these supporting documents.

Second, **even assuming that the importations were duly proven to be capital goods, Taganito's claim still would not prosper because it failed to present evidence to show that it properly amortized the related input VAT over the estimated useful life**

of the capital goods in its subsidiary ledger, as required by [Sections 4.110-3 and 4.113-3]. This is made apparent by the fact that Taganito's claim for refund is for the full amount of the input VAT on the importation, rather than for an amortized amount, and by its failure to present its subsidiary ledger.[57] (Emphasis supplied.)

The Court required Taganito to submit the subsidiary ledger, an accounting requirement under Section 4.113-3 of RR No. 16-2005, because the importation of dump trucks was alleged to be a purchase of capital goods. As such, the related input tax on the purchase must be amortized over the estimated useful life of the goods under Section 4.110-3 of RR No. 16-2005. The subsidiary ledger contained the information on the total input tax on the importation and the monthly input tax claimed. It is the best evidence to establish the proper amortization of claimed input tax. Since Taganito failed to introduce in evidence the subsidiary ledger, the Court denied the claim for refund.

Distinct from the foregoing, the presentation of subsidiary journals in the instant case is not indispensable. For one, the subject of the claim for refund is input tax on the importation of goods *other than capital goods* and domestic purchases of services.[58] Also, the CTA was able to determine the existence of Philex Mining's valid creditable input VAT attributable to its zero-rated sales by probing all the official receipts, quarterly VAT returns, and the import entry declarations submitted. The CTA evaluated the ICPA's report and concluded that Philex Mining incurred input taxes in connection with its zero-rated sales and the input taxes were not applied against any of its output tax liability.[59]

Similarly, there was nothing in Section 112 (A) and RR No. 16-2005 that require prior filing of monthly VAT declarations as a condition precedent to the entitlement for refund. While admittedly, Section 114 (A)[60] of the Tax Code, as implemented

---

[57] *Id.* at 787-789.

[58] *Rollo*, p. 73.

[59] *Id.* at 73-78.

[60] SEC. 114. *Return and Payment of Value-Added Tax*. —

by Section 4.114-1[61] of RR No. 16-2005, requires the taxpayer to pay VAT on a monthly basis, the Tax Code and relevant revenue regulations do not provide denial of the claim as a consequence of non-compliance. The failure to pay VAT every month may give rise to the payment of penalties but it does not affect the taxpayer's entitlement to its claim for refund as long as it has sufficiently shown that the VAT has in fact been paid. Here, the CTA examined the voluminous documents submitted by Philex Mining and concluded that Philex Mining sufficiently proved payment of creditable input VAT for the second and third quarters of TY 2010.

In all, Philex Mining's failure to maintain subsidiary sales and purchase journals or to file the monthly VAT declarations should not result in the **outright** denial of its claim for refund or credit of unutilized input VAT attributable to its zero-rated sales. These are not part of the requirements for Philex Mining to be entitled thereto. Section 112 (A) of the Tax Code is very clear; no construction or interpretation is needed. The Court may not construe a statute that is free from doubt; neither can we impose conditions or limitations when none is provided for.[62] While tax refunds are in the nature of tax exemptions

---

(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. x x x.

[61] SEC. 4.114-1. *Filing of Return and Payment of VAT.* —

(A) Filing of Return. — x x x

x x x x x x x x x

Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter.

x x x x x x x x x

The monthly VAT Declarations (BIR Form 2550M) of taxpayers whether large or non-large shall be filed and the taxes paid not later than the 20th day following the end of each month.

x x x x x x x x x

[62] *Commissioner of Internal Revenue v. American Express International, Inc.*, 500 Phil. 586, 608 (2005).

and are construed *strictissimi juris* against the taxpayer, tax statutes shall be construed strictly against the taxing authority and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the statute expressly and clearly declares.[63] Verily, the CTA did not err in ruling that the absence of subsidiary sales journal, subsidiary purchase journal, and monthly VAT declarations is not sufficient to deprive Philex Mining of its right to a refund.

In any event, the CIR's allegation that Philex Mining failed to prove its creditable input tax attributable to its zero-rated sales necessarily involves factual issue and, thus, is evidentiary in nature which cannot be entertained in the present petition where only questions of law may be generally raised. The Court is not a trier of facts; it is not our duty to look into the documents submitted during trial in order to test the truthfulness of their contents.[64] Besides, the findings of fact of the CTA, which, by the very nature of its functions, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, are generally regarded as final, binding, and conclusive upon this Court. The findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion. Here, we find no cogent reason to depart from this general principle.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Gesmundo, Lazaro-Javier,* and *Rosario,*[*] *JJ.*, concur.

---

[63] *Republic of the Phils. v. Intermediate Appellate Court*, 273 Phil. 573, 579 (1991).

[64] *Supra* note 46.

[*] Designated as additional Member per Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 242273. November 23, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **NICO MAZO *y* YBAÑEZ and JOEY DOMDOMA *y* ABLETES,** *Accused-Appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY.— In illegal sale and possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offenses and the fact of its existence is vital to a judgment of conviction. Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court. Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.

2. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; MARKING OF DANGEROUS DRUGS; THE PROSECUTION IS CONSIDERED TO HAVE FAILED TO REMOVE ANY SUSPICION OF TAMPERING, SWITCHING, OR PLANTING OF EVIDENCE WHEN THE MATERIAL DETAILS REGARDING THE MARKING OF THE SEIZED DRUGS ARE LACKING.— The first stage in the chain of custody is the marking of dangerous drugs which is indispensable in the preservation of their integrity and evidentiary value. The marking operates to set apart as evidence the dangerous drugs from other materials, and forestalls switching, planting, or contamination of evidence. The succeeding handlers of dangerous drugs will also use the marking as reference. . . .In this case, the prosecution, likewise, failed to account the details on how

the confiscated items were marked. PO1 Amante testified that he marked the sachet of *shabu* he bought with "NICO," and the two sachets he recovered during frisking with "NICO-1" and "NICO-2." Yet, there was no showing where and when the seized drugs were marked. PO1 Amante simply stated in his affidavit that the drugs were "*later marked*" without providing the details surrounding the initial handling of the drugs. Neither was the issue clarified during PO1 Amante's testimony in open court. In other words, the place of marking remains unknown. Corollarily, lacking material details regarding the marking of the seized drugs, the prosecution failed to remove any suspicion of tampering, switching, or planting of evidence.

3. ID.; ID.; ID.; ID.; IF IT IS NOT PRACTICABLE TO CONDUCT THE INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS IMMEDIATELY AFTER SEIZURE AND CONFISCATION, THEY MUST BE DONE AS SOON AS THE BUY BUST TEAM REACHES THE NEAREST POLICE STATION.— [T]he chain of custody rule requires the conduct of inventory and photograph of the seized items *immediately after seizure and confiscation*, which is intended by law to be made immediately after, or at the place of apprehension. If not practicable, the implementing rules allow the inventory and photograph as soon as the buy-bust team reaches the nearest police station, or the nearest office of the apprehending team. In this case, the inventory and photograph of the confiscated items were not made immediately at the place of arrest but at the *barangay* hall. The police officers only made a general statement that the place of arrest was hostile without elaborating any threat on their security.

4. ID.; ID.; ID.; ID.; PRESENCE OF INSULATING WITNESSES; THE PRESENCE OF WITNESSES MUST BE SECURED NOT ONLY DURING THE INVENTORY, BUT ALSO AT THE TIME OF THE WARRANTLESS ARREST TO PRESERVE THE INTEGRITY OF THE CONFISCATED ITEMS.— [T]he absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph of the seized items, puts serious doubt as to the integrity of the confiscated items. Admittedly, only an elected public official signed the inventory of evidence. There was no attempt on the part of the entrapment team to comply with the law and its implementing rules despite

the planned buy-bust operation. The operatives also failed to provide any justification showing that the integrity of the evidence had all along been preserved. Worse, it appears that the *barangay* official was absent when the drugs were seized. The prosecution stipulated that Kagawad Cabo "*had no personal knowledge as to the circumstances regarding the alleged confiscation of the items* x x x." On this point, it must be stressed that the presence of the witnesses must be secured not only during the inventory but, more importantly, at the time of the warrantless arrest. It is at this point in which the presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.

We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; THE PRESUMPTION IS EFFECTIVELY DESTROYED WHEN THE PERFORMANCE OF DUTY IS TAINTED WITH IRREGULARITIES.— [I]t must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

RESOLUTION

LOPEZ, *J.*:

The conviction of Nico Mazo *y* Ybañez (Nico) for illegal sale and possession of dangerous drugs and Joey Domdoma *y* Abletes (Joey) for illegal sale of dangerous drugs, is the subject of review in this Motion for Reconsideration[1] assailing the Court's Resolution[2] dated July 15, 2019, which affirmed the Court of Appeals' (CA) Decision[3] dated May 16, 2018 in CA-G.R. CR-HC No. 09348.

ANTECEDENTS

On January 12, 2017, the Station Anti-Illegal Drugs-Special Operations Task Group planned a buy-bust operation against Nico based on an information that he is selling drugs in Barangay La Paz, Makati City. After the briefing, PS/Insp. Valmark C. Funelas designated PO1 Andrew O. Amante (PO1 Amante) as poseur-buyer, and PO1 Nathaniel Maculi and PO1 Stephanie Limjap (PO1 Limjap), as back-ups.[4]

About midnight the following day, the entrapment team together with the informant went to Sunrise Street, Barangay La Paz, Makati City. Thereat, they saw two men and one woman standing at the street. The informant told PO1 Amante, "[s]*ir yung matangkad na bata*[,] *si Nico yun, yung dalawang kasama nya*[,] *bata nya yun*." The informant then introduced PO1 Amante to Nico as his friend who would buy ₱500.00 worth of *shabu*. Thus, Nico ordered his companions and said, "*Joey kunin mo ang pera*[,] *bigay mo kay Joy*." Accordingly, PO1 Amante gave

---

[1] *Rollo*, pp. 41-58.

[2] *Id.* at 39-40.

[3] *Id.* at 2-16; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Fernanda Lampas Peralta and Amy C. Lazaro-Javier (now a Member of this Court).

[4] *Id.* at 4.

the buy-bust money to Joey who handed it to Joy.[5] Thereafter, Nico retrieved from his left pocket three plastic sachets containing white crystalline substance. Nico picked one sachet and uttered, *"Joey, bigay mo 'to kay pare ko.'"* Joey got the sachet (later marked with "NICO"), and handed it to PO1 Amante. At that moment, PO1 Amante scratched his cheek which served as the pre-arranged signal that the transaction has been consummated.[6]

The rest of the team rushed in and arrested Nico, Joey and Joy. After frisking the suspects, PO1 Amante recovered from Nico two plastic sachets containing white crystalline substance (later marked with "NICO-1" and "NICO-2"), while PO1 Limjap found from Joy the buy-bust money. The police officers proceeded to the *barangay* hall where they conducted an inventory and photograph of the seized items in the presence of Barangay Kagawad Christopher Cabo.[7] After investigation, the suspects were identified as Nico Mazo *y* Ibañez @ "Nico," Joey Domdoma *y* Abletes @ "Joey," and Mary Joy Garcia *y* Vitug @ "Joy."[8]

Afterwards, PO1 Amante personally delivered the confiscated items to PCI Ofelia Lirio Vallejo of the Southern Police District Crime Laboratory Office for examination.[9] The examination of the substance yielded positive results for methamphetamine hydrochloride.[10] Nico, Joey and Joy were then charged with violations of Sections (Sec.) 5 and 11, Article II of Republic Act (RA) No. 9165[11] before the Regional Trial Court (RTC), to wit:

---

[5] *Id.* at 4-5. The buy-bust money is a 500-peso bill with SN# QJ113880; records, p. 21.

[6] *Id.* at 5.

[7] Records, pp. 123-124.

[8] *Id.* at 142.

[9] *Id.* at 130, 132.

[10] *Id.* at 101.

[11] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425,

[Criminal Case No. R-MKT-17-00179-CR for illegal sale of dangerous drugs against Nico, Joey and Joy]

On the 13th day of January 2017, in the city of Makati, the [*sic*] Philippines, accused, mutually helping and confederating with one another, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point twelve (0.12) gram of Methamphetamine Hydrochloride, a dangerous drug, in consideration of the amount of Php500.

CONTRARY TO LAW.[12]

[Criminal Case No. R-MKT-17-00180-CR for illegal possession of dangerous drugs against Nico]

On the 13th day of January 2017, in the city of Makati, the [*sic*] Philippines, accused, mutually helping and confederating with one another, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in their possession, direct custody and control three (3) small heat-sealed plastic transparent sachets containing a total of zero point twenty-two (0.22) gram of Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[13]

Nico, Joey and Joy denied the accusations. Nico claimed that he was with Joy sleeping inside their house when several men barged in and brought them to the police station.[14] On the other hand, Joey narrated that he was on his way to buy food when a policeman arrested him.[15]

OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES; signed on June 7, 2002.

[12] *Records*, p. 1.

[13] *Id.* at 41.

[14] TSN, March 22, 2017, pp. 19-31; records, pp. 247-259.

[15] TSN, March 22, 2017, pp. 3-18; *id.* at 231-246.

On March 29, 2017, the RTC convicted Nico and Joey of illegal sale of dangerous drugs. Also, it held Nico guilty of illegal possession of dangerous drugs. The RTC gave credence to the prosecution's version as to the transaction that transpired between them and the poseur-buyer. However, Joy was acquitted,[16] thus:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. R-MKT-17-0[0]179-CR, the court finds accused, Nico Mazo *y* Ybañez and Joey Domdoma y Ableteś, GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 and sentences each of them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos ([₱]500,000.00). On the other hand, the court ACQUITS their co-accused, Mary Joy Garcia y Vitug, of the offense charged on reasonable doubt.
>
> 2. In Criminal Case No. R-MKT-17-00180-CR, the court finds accused Nico Mazo *y* Ybañez, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos ([₱]300,000.00).
>
> x x x x x x x x x
>
> SO ORDERED.[17]

Aggrieved, Nico and Joey elevated the case to the CA docketed as CA-G.R. CR-HC No. 09348. They argued that no actual buy-bust operation transpired and that they were framed-up. Moreover, the apprehending officers did not comply with the chain of custody requirement.[18] On May 16, 2018, the CA

---

[16] CA *rollo*, pp. 61-68; penned by Presiding Judge Edgardo M. Caldona.

[17] *Id.* at 67-68.

[18] *Id.* at 33-59.

affirmed the RTC's findings and ruled that the prosecution preserved the integrity and evidentiary value of the dangerous drugs, thus:

> From the testimony of PO1 Amante, the prosecution established that he had the custody of the drug seized from accused-appellants from the moment they were arrested, during the time that they were transported to the police station, and up to the time that the drug was submitted to the crime laboratory for examination. The identification of the seized items in court by the same witness, as well as all the other documentary evidence (except the *Inventory Receipt*) and the testimony of the forensic chemist, who examined the subject drugs and personally brought the said illegal drugs to the trial court, were also stipulated by the parties. It is therefore safe to conclude that, to the unprejudiced mind, the testimonies show without a doubt that the evidence seized from the accused-appellant at the time of the buy-bust operation was the same one tested, introduced, and testified to in court. As aptly ruled by the trial court:
>
> > The unbroken chain of custody was established in the instant cases through the following link[s]: (1) PO1 Andrew Amante recovered and marked the sachets containing white crystalline substance with "NICO," "NICO-1", "NICO-2"; (2) a request for laboratory examination of the seized items was signed by PO3 Voltaire Esguerra, the investigator on case to whom the subject pieces of evidence were presented by PO1 Amante after the inventory; (3) the delivery by PO1 Andrew Amante of the same items to the Southern Police District Crime Laboratory to PCI Ofelia Lirio Vallejo who received the same from Amante: [4] Physical Science Report No. D-103-17 was prepared by PCI Ofelia Lirio Vallejo which confirmed after due examination that the marked items seized from the accused were *shabu*; and [5] the eventual, presentation and identification of the items which were brought officially to the court by PCI Ofelia Lirio Vallejo and marked as Exhibits "V" to "X."
>
> x x x x x x x x x
>
> WHEREFORE, the appeal is DENIED. The *Decision* dated March 29, 2017 of the Regional Trial Court, Branch 65, Makati City, in Criminal Case Nos. R-MKT-17-00179-CR and R-MKT-17-00180-CR, is hereby affirmed.
>
> SO ORDERED.[19]

[19] *Rollo*, pp. 14-16.

On July 15, 2019, we dismissed the appeal of Nico and Joey for their failure to show how the CA committed any reversible error. Aggrieved, they sought a reconsideration arguing that the police officers did not observe the proper handling and custody of the seized items.

RULING

We acquit.

In illegal sale and possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offenses and the fact of its existence is vital to a judgment of conviction.[20] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.[21] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.[22] Here, the records reveal a broken chain of custody.

The first stage in the chain of custody is the marking of dangerous drugs which is indispensable in the preservation of their integrity and evidentiary value. The marking operates to set apart as evidence the dangerous drugs from other materials, and forestalls switching, planting, or contamination of evidence. The succeeding handlers of dangerous drugs will also use the

---

[20] *People v. Partoza*, 605 Phil. 883, 890 (2009). See also *People v. Cariño*, G.R. No. 233336, January 14, 2019; *People v. Crispo*, 828 Phil. 416, 436 (2018); *People v. Sanchez*, 827 Phil. 457, 472 (2018); *People v. Magsano*, 826 Phil. 947, 964-965 (2018); *People v. Manansala*, 826 Phil. 578, 592 (2018); *People v. Miranda*, 824 Phil. 1042, 1058 (2018); and *People v. Mamangon*, 824 Phil. 728, 742 (2018).

[21] *People v. Ismael*, 806 Phil. 21, 33 (2017).

[22] *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

marking as reference.[23] In *People v. Baculio*,[24] this Court ruled that the authorities did not comply with the chain of custody requirement absent definite statement as to where the marking of the seized items took place. In that case, the joint affidavit of the arresting officers and their testimonies failed to point the actual place of marking. In this case, the prosecution, likewise, failed to account the details on how the confiscated items were marked. PO1 Amante testified that he marked the sachet of *shabu* he bought with "NICO," and the two sachets he recovered during frisking with "NICO-1" and "NICO-2." Yet, there was no showing where and when the seized drugs were marked. PO1 Amante simply stated in his affidavit that the drugs were "*later marked*"[25] without providing the details surrounding the initial handling of the drugs. Neither was the issue clarified during PO1 Amante's testimony in open court. In other words, the place of marking remains unknown. Corollarily, lacking material details regarding the marking of the seized drugs, the prosecution failed to remove any suspicion of tampering, switching, or planting of evidence.

Similarly, the chain of custody rule requires the conduct of inventory and photograph of the seized items *immediately after seizure and confiscation*, which is intended by law to be made immediately after, or at the place of apprehension. If not practicable, the implementing rules allow the inventory and photograph as soon as the buy-bust team reaches the nearest police station, or the nearest office of the apprehending team.[26] In this case, the inventory and photograph of the confiscated items were not made immediately at the place of arrest but at the *barangay* hall. The police officers only made a general statement that the place of arrest was hostile without elaborating any threat on their security.[27]

---

[23] *People v. Ismael*, 806 Phil. 21, 31-32 (2017), citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

[24] G.R. No. 233802, November 20, 2019.

[25] Records, p. 141.

[26] *People v. Tomawis*, 830 Phil. 385, 405 (2018).

[27] Records, p. 142.

Lastly, the absence of a representative of the National Prosecution Service or the media as an insulating witness to the inventory and photograph of the seized items, puts serious doubt as to the integrity of the confiscated items.[28] Admittedly, only an elected public official signed the inventory of evidence. There was no attempt on the part of the entrapment team to comply with the law and its implementing rules despite the planned buy-bust operation. The operatives also failed to provide any justification showing that the integrity of the evidence had all along been preserved. Worse, it appears that the *barangay* official was absent when the drugs were seized. The prosecution stipulated that Kagawad Cabo "*had no personal knowledge as to the circumstances regarding the alleged confiscation of the items* x x x."[29] On this point, it must be stressed that the presence of the witnesses must be secured not only during the inventory but, more importantly, at the time of the warrantless arrest. It is at this point in which the presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.[30]

We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity

---

[28] The offense was allegedly committed on January 13, 2017. Hence, the applicable law is RA No. 9165, as amended by RA No 10640, entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the 'Comprehensive Dangerous Drugs Act of 2002'"; approved on July 15, 2014, which took effect on July 23, 2014. See also OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) with an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory, and be given a copy thereof.

[29] Records, p. 93.

[30] *People v. Tomawis*, *supra* note 26, at 409.

and evidentiary value of the seized drugs.[31] In *People v. Lim*,[32] we explained that in case the presence of any, or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[33] (Emphases in the original and citations omitted.)

Accordingly, in *People v. Caray*,[34] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable

---

[31] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

[32] G.R. No. 231989, September 4, 2018.

[33] *Id.*

[34] G.R. No. 245391, September 11, 2019.

explanation for the deviation from the procedural requirements of the chain of custody rule under Sec. 21 of RA No. 9165. In *Matabilas v. People*,[35] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance. In *People v. Aure*,[36] the inventory was conducted in the presence of a media representative only, and the policemen offered a perfunctory excuse that their team leader invited the three required witnesses, but to no avail. In *People v. Dela Torre*,[37] the prosecution failed to explain why only an elected public official witnessed the inventory and photography of the seized items. In *People v. De Lumen*,[38] the prosecution did not bother to explain the absence of the representatives from the Department of Justice and the media during the physical inventory. In these cases, the integrity and evidentiary value of the seized items have been compromised for failure of the prosecution to justify non-compliance with the chain of custody requirement, or to show that it exerted earnest efforts in securing the required witnesses. We find no reason to deviate from these rulings.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.[39] Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.[40]

---

[35] G.R. No. 243615, November 11, 2019.

[36] G.R. No. 237809, January 14, 2019.

[37] G.R. No. 238519, June 26, 2019.

[38] G.R. No. 240749, December 11, 2019.

[39] *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Mallillin v. People*, 576 Phil. 576, 593 (2008).

[40] *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

We reiterate that the provisions of Sec. 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Nico and Joey must be acquitted of the charges against them given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the motion for reconsideration is **GRANTED**. The Court's July 15, 2019 Resolution is **REVERSED** and **SET ASIDE**. Nico Mazo *y* Ybañez and Joey Domdoma *y* Abletes are **ACQUITTED** in Criminal Case Nos. R-MKT-17-00179-CR and R-MKT-17-00180-CR, and are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Gesmundo, Hernando,*[*] and *Rosario,*[**] *JJ.*, concur.

---

[*] Designated additional Member in lieu of Associate Justice Amy C. Lazaro-Javier *per* raffle dated November 9, 2020.

[**] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

THIRD DIVISION

[G.R. No. 249588. November 23, 2020]

SHARIFF UDDIN *y* SALI, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA NO. 7610); LASCIVIOUS CONDUCT; IF THE VICTIM IS 12 YEARS OLD OR ABOVE BUT UNDER 18 YEARS OLD, OR AT LEAST 18 YEARS OLD UNDER SPECIAL CIRCUMSTANCES, THE NOMENCLATURE OF THE CRIME SHOULD BE LASCIVIOUS CONDUCT UNDER RA NO. 7610.— [T]he proper nomenclature of the offense charged against petitioner for violation of Section 5(b), Article III of RA 7610 should be Lascivious Conduct. This is in light of the fact that AAA was only 13 years old at the time of the incident.

In *People v. Tulagan* (*Tulagan*), the Court pronounced that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, "*the nomenclature of the crime should be 'Lascivious Conduct under Section 5 (b) of R.A. No. 7610' with the imposable penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the RPC.*"

2. ID.; ID.; ID.; ELEMENTS OF LASCIVIOUS CONDUCT; CHILDREN, DEFINED.— The essential elements of Section 5(b), Article III of RA 7610 are:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.

Under Section 3(a) of RA 7610, the term "children" refers to persons below 18 years of age, or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

3. ID.; ID.; ID.; ID.; OTHER SEXUAL ABUSE; CHILD ABUSE, DEFINED; THE PHRASE "OTHER SEXUAL ABUSE" COVERS NOT ONLY A CHILD WHO IS ABUSED FOR PROFIT, BUT ALSO ONE WHO ENGAGES IN LASCIVIOUS CONDUCT THROUGH COERCION OR INTIMIDATION BY AN ADULT.— [T]he phrase "other sexual abuse" covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. The very definition of "child abuse" under Section 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of; it refers to the maltreatment whether habitual or not, of the child. Thus, contrary to petitioner's argument, there can be a violation of Section 5(b), Article III of RA 7610 even though the sexual abuse against the child victim was committed only once, even without a prior sexual offense.

Further, in the offense of Lascivious Conduct, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will. The intimidation, however, need not necessarily be irresistible.

. . .

Considering the presence of all the elements of Lascivious Conduct under Section 5(b), Article III of RA 7610, the RTC, as affirmed by the CA, correctly convicted petitioner for the offense charged.

4. ID.; MURDER, ELEMENTS OF.— To successfully prosecute Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

5. ID.; FELONIES; ATTEMPTED FELONY, ELEMENTS OF. — The essential elements of an attempted felony are: (1) the

offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other that his or her spontaneous desistence.

6. ID.; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH CANNOT BE APPRECIATED IF THERE IS NO SHOWING THAT THE ACCUSED PURPOSELY USED FORCE EXCESSIVELY OUT OF PROPORTION TO THE MEANS OF DEFENSE AVAILABLE TO THE PERSON ATTACKED.— "*The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.*" The appreciation of abuse of superior strength depends on the age, size, and strength of the parties.

It is beyond doubt that petitioner was superior to AAA in terms of age, size, and strength. Nonetheless, the records fail to show that petitioner purposely selected or took advantage of such inequality to facilitate the commission of the crime. . . . Thus, to take advantage of superior strength means to purposely use force *excessively out of proportion* to the means of defense available to the person attacked.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY; MINOR INCONSISTENCIES IN TESTIMONIES; LEEWAY IS GIVEN TO MINOR WITNESSES WHEN RELATING TRAUMATIC INCIDENTS.— In an attempt to assail the credibility of AAA's testimony, petitioner claims inconsistency in AAA's statements. He points out that AAA testified during direct examination that he pulled her to the forested area but stated during cross-examination that he was not able to pull her. Additionally, he avers that AAA's actuation after the alleged incident lies outside human experience and fails to inspire belief. He particularly mentions AAA's testimony that right after rolling to the ground, she took her slipper and tried to look for the other one. He opines that "*a person who has just been sexually abused would not bother to look for her belongings. Instead,*

he/she would exert effort to escape as soon as possible."

The Court is not swayed.

The alleged inconsistency in AAA's testimony appears minor and inconsequential. It does not hinge on any essential element of Lascivious Conduct or Attempted Homicide. Besides, leeway is generally given to minor witnesses when relating traumatic incidents of the past.

8. ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT ON THE CREDIBILITY OF TESTIMONIES IS ENTITLED TO GREAT WEIGHT.— [I]t bears emphasizing that "[*t*]*he credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination.*" Considering the absence of any showing that the RTC's assessment on the credibility of the AAA's testimony was tainted with arbitrariness or oversight of a fact, it is entitled to great weight, if not conclusive or binding on the Court.

9. ID.; ID.; DENIAL; ALIBI; DENIAL AND ALIBI CANNOT PREVAIL OVER POSITIVE OR CATEGORICAL TESTIMONY.— [P]etitioner's bare assertion of denial and alibi cannot prevail over the positive and categorical testimony of AAA. Denial, if unsubstantiated by clear and convincing testimony of AAA. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Likewise, alibi is one of the weakest defenses; it is not only inherently frail and unreliable but also easy to fabricate and difficult to check or rebut.

10. CRIMINAL LAW; LASCIVIOUS CONDUCT; PENALTY AND DAMAGES.— The penalty to be imposed for the offense of Lascivious Conduct under Section 5(b), Article III of RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. The Indeterminate Sentence Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal* medium, a divisible penalty. Since none of the circumstances under Section 31 of RA 7610 is present, and applying the Indeterminate Sentence Law, the minimum term shall be taken from the penalty next lower in degree which is *prision mayor* medium to *reclusion temporal* minimum, and the maximum term to be taken from

reclusion temporal maximum, there being no other modifying circumstances attending the commission of the offense.

Thus, the Court finds that the proper penalty for the offense of Lascivious Conduct under Section 5(b), Article III of RA 7610 should be the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as the minimum term, to twenty (20) years of *reclusion temporal* maximum, as the maximum term.

. . .

As the amount of damages for the offense of Lascivious Conduct, the Court affirms the CA in upholding the moral damages of ₱50,000.00 already imposed by the RTC, in increasing the exemplary damages to ₱50,000.00, and in imposing the additional amount of ₱50,000.00 as civil indemnity. These amounts are in accordance with prevailing jurisprudence. However, for lack of legal basis, the imposed fine of ₱15,000.00 should be deleted.

11. ID.; ATTEMPTED HOMICIDE; PENALTY AND DAMAGES.— Consequently, the absence of any of the circumstances enumerated in Article 248 necessitates the Court to hold petitioner liable only for Attempted Homicide under Article 249 in relation to Article 6 of the RPC, . . .

. . .

Under the Indeterminate Sentence Law, the maximum term of the indeterminate sentence shall be taken in view of the attending circumstances that could be properly imposed under the rules of the RPC, and the minimum term shall be within the range of the penalty next lower to that prescribed by the RPC. . . .

In view of the absence of any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years and four (4) months and one (1) day to four (4) years and two (2) months; and the minimum term shall be taken within the range of *arresto mayor*. Hence, the penalty for the crime of Attempted Homicide is the indeterminate penalty of six (6) months of *arresto mayor*, as the minimum term, to four (4) years and two (2) months of *prision correccional*, as the maximum term.

. . .

As regards the damages for the crime of Attempted Homicide, the case of *People v. Jugueta* instructs that the accused shall be liable only for ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages. Further, no exemplary damages shall be awarded in view of the absence of any aggravating circumstance.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*[1] filed by Shariff Uddin *y* Sali (petitioner) under Rule 45 of the Rules of Court assailing the Decision[2] dated June 14, 2019 and the Resolution[3] dated September 24, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 42179. The assailed CA Decision affirmed with modification the Decision[4] dated July 4, 2018 of Branch 68, Regional Trial Court (RTC), [redacted] in Criminal Case Nos. L-10872 and L-10873 convicting petitioner of: (1) violation of Section 5 (b), Article III of Republic Act No. (RA) 7610;[5] and (2) Attempted Murder under Article 248

---

[1] *Rollo*, pp. 12-32.

[2] *Id*. at 36-59; penned by Associate Justice Fernanda Lampas-Peralta with Associate Justices Rodil V. Zalameda (now a member of the Court) and Jhosep Y. Lopez, concurring.

[3] *Id*. at 61-62; penned by Associate Justice Fernanda Lampas-Peralta with Associate Justices Jhosep Y. Lopez and Geraldine C. Fiel-Macaraig, concurring.

[4] *Id*. at 82-93; penned by Judge Maria Laarni R. Parayno.

[5] Entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for Its Violation, and for Other Purposes," approved on June 17, 1992.

in relation to Article 6 of the Revised Penal Code (RPC). The assailed CA Resolution, on the other hand, denied petitioner's subsequent Motion for Reconsideration.[6]

The Antecedents

Two criminal Informations[7] were filed in the RTC of [redacted] against petitioner, respectively charging him with: (1) violation of Section 5 (b), Article III of RA 7610 in relation to RA 8369;[8] and (2) Attempted Murder under Article 248, in relation to Article 6 of the RPC. The accusatory portions of the Informations read:

1) *Criminal Case No. L-10872 (violation of RA 7610)*

That on or about 10:30 in the morning of February 20, 2016 in [redacted] and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously grab [AAA],[9] a 13-year old minor (DOB 23 Feb. 2002) to a grassy portion and once thereat [held] her private parts, and then inserted his hand into her panty and [caressed] her vagina, committing sexual abuse upon the said minor complainant

---

[6] CA *rollo*, pp. 103-110.

[7] Records (L-10872), pp. 1-2; Records (L-10873), pp. 1-2.

[8] Entitled "An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Bilang 129, as Amended, Otherwise Known as Act of 1980, Appropriating Funds Therefor and for Other Purposes," approved on October 8, 1997.

[9] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes"; RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

thereafter [lifted] her and then [threw] her into a ravine, which act is inimical to the best interest or prejudicial to the child's development, to her damage and prejudice.

CONTRARY TO LAW.[10]

2) *Criminal Case No. L-10873 (Attempted Murder)*

That on or about 10:30 in the morning of February 20, 2016 in [redacted] and within the jurisdiction of this Honorable Court, with intent to kill, and abuse of superior strength, did, then and there, wilfully, unlawfully and feloniously, after committing sexual abuse upon [AAA] (offended party), a 13-year old minor (DOB 23 Feb. 2002) and in order to conceal his crime of sexual abuse, lifted and threw the said minor-complainant into a ravine, which cause her injuries to wit: multiple abrasions, upper and lower extremities, accused however was not able to [perform] all the acts of execution which could produce the crime of Murder as a consequence thereof as the injuries sustain[ed] by the minor-complainant [were] not fatal, to the prejudice and damage of the minor complainant.

Contrary to Article 248 in relation to Article 6 of the Revised Penal Code.[11]

Upon arraignment on March 8, 2016, petitioner pleaded "not guilty" to both charges.[12] Pre-trial and trial ensued.

The RTC synthesized the evidence of the parties as follows:

Evidence for the Prosecution

On the date [of] the incident, February 20, 2016, AAA was 13 years old, having been born on February 23, 2002.

On February 20, 2016 at 10:30 a.m., while AAA was on her way to buy their food and chicken feed per order of her father, she saw [petitioner] from the opposite direction around 15 to 18 meters away from her. At the place where there were no houses, [petitioner] blocked her way, then pulled her to a forested *("masukal")* area, and started

---

[10] Record (L-10872), p. 1.

[11] Record (L-10873), p. 1.

[12] See Order dated March 8, 2016 penned by Judge Maria Laarni R. Parayno, records (L-10872), pp. 22-23.

touching her breast in a circular motion while he was pulling her. She pleaded for him to stop and also tried to resist or pull herself away from him. At that time, [petitioner] also inserted his hand inside her panty and touched her private part. She could not move at that time because she was already afraid. He embraced her while pulling her towards the forested area for around 35 minutes. The [petitioner] also told her not to be noisy. After pulling each other for some time, [petitioner] suddenly carried her and threw her into the ravine which was around 25 meters high from where they were. She then rolled down and hit her head on the ground. She also looked for her other slipper which fell one meter lower from where she fell. Her further rolling down the ravine was prevented by the vines that wrapped around her body. When she finally stood up, she removed the vines from her body, looked for her slipper, and run *[sic]*. Then, [she] saw a man at the top part of the mountain from where she and [petitioner] were before she was thrown by the latter, and she asked for that man's help. Then, the man came down, got her out of the ravine and brought her to a place where there were already some houses. She learned that the man who helped her was Alvin Santos. At that time, she had many bruises and her body was very painful. She relayed to the people there what happened to her. Subsequently, her father, mother, and elder sister arrived. Then, they proceeded to the police to report. Afterwards, she was brought to the house of the [petitioner] where the [petitioner] and his wife were. When she identified the [petitioner], the police arrested him. Then she was brought to [redacted] for medical examination. Because of the incident, she felt very afraid and though[t] that she was going to die.

Alvin Santos testified that while he was walking along the road on February 20, 2016 at 10:30 a.m. in order to get some cogon grass, he saw AAA, a daughter of his relative, being pulled by [petitioner]. Then, he saw the [petitioner] carry AAA and throw her into the cliff. He was around 10 meters away from them. After the [petitioner] threw AAA to the cliff, he asked the [petitioner] why he threw AAA into the ravine, but the [petitioner] only looked at him and ran away. AAA, on the other hand, was already on the ground asking for help *("saklolo")*. When he heard that, he went down and brought AAA up to the road. AAA sustained several injuries on her face, legs, and head. Then, he brought her to his niece's house where AAA was made to drink water. He also proceeded to AAA's house and informed her father about the incident. After informing AAA's father, AAA was brought to a doctor. In the afternoon of that same day, he again saw [petitioner] at the house of the latter's parents-in-law. He informed

the police and the barangay captain that the [petitioner] did something to AAA, so the [petitioner] was arrested.

Dr. Joy Cristobal-Gonzalo testified that she examined AAA on February 20, 2016, the date of the incident, at 4 p.m. She found on AAA's hymen old laceration at 1, 3, 6 and 9 o'clock positions which she opined were sustained around more than six months before the date of the incident.

As for PO3 Quezada, she only read aloud certain entries in the police blotter which the defense stipulated upon.

Thereafter, the prosecution rested its case with the admission of its following documentary evidence:

x x x x x x x x x

Evidence of the Defense

[Petitioner] denied having committed the crimes charged against him because he was inside his house taking care of his child.

He testified that he is a native of Zamboanga City, while his live-in partner is from [redacted]. On February 20, 2016, they had already been staying for three weeks with the parents of his live-in partner in [redacted]. They were just on vacation, so he did not work as a construction worker during that time. For said three weeks, he did not go out of the house as he only took care of his one-year-old child.

He first saw AAA in [redacted] when AAA went to the house of his live-in partner and asked him if there was a man who ran towards his house. On cross-examination, however, he changed his answer and testified that he was asked by a man first. The next time, it was AAA who already talked to his live-in partner. He denied that he [knew] Alvin Santos before the date of the incident.

The defense rested its case when it failed to present its second witness who could no longer be located.[13]

The Ruling of the RTC

In its Decision[14] dated July 4, 20118, the RTC convicted petitioner of violation of Section 5 (b),[15] Article III of RA 7610

[13] *Rollo*, pp. 84-87.

[14] *Id*. at 82-93.

[15] Section 5 (b), Article III of Republic Act No. 7610 provides:

and of Attempted Murder under Article 248 in relation to Article 6 of the RPC. It ruled that the prosecution was able to prove the guilt of petitioner beyond reasonable doubt.

Likewise, the RTC found AAA and her testimony to have stood the test of credibility. It declared that AAA was consistent and natural, and had positively identified petitioner as the perpetrator. It was also convinced that there was no tinge of fabrication or concoction of the incident on the part of AAA, noting that she was unwavering even during her cross-examination.[16]

As to the case for violation of Section 5 (b), Article III of RA 7610, the RTC held that petitioner's acts of touching AAA's breasts and inserting his finger inside her panties constituted lascivious conduct. It ruled that when petitioner approached AAA and intercepted her along the way and suddenly performed the aforesaid acts, it was clear that he had the intention to touch her private parts.[17]

As regards the case for Attempted Murder, the RTC ruled that petitioner's intent to kill was flagrant when he carried AAA and then threw her into the ravine of around 25 to 30 meters

---

SECTION 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

[16] *Rollo*, p. 88.

[17] *Id.* at 89.

below the road. Further, the RTC found petitioner to have employed abuse of superior strength in executing the intended felony. It noted that AAA was only 13 years old at the time of the incident; hence, her strength could not overcome that of petitioner who is a male and who claimed that he was a construction worker.[18]

The RTC further held that petitioner's defense of denial did not deserve credence. It declared that denial is an intrinsically weak defense and should be supported by strong evidence to merit credibility.[19]

Thus, with respect to the case for violation of Section 5 (b), Article III of RA 7610, the RTC sentenced petitioner to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* maximum, as maximum. Moreover, it ordered the payment of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages, both with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid. It further ordered the payment of a fine of ₱15,000.00 with subsidiary imprisonment in case of non-payment.[20]

As to the case for Attempted Murder, the RTC imposed the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Further, it ordered the payment of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.[21]

Petitioner appealed to the CA.

---

[18] *Id*. at 92.

[19] *Id*. at 90.

[20] *Id*. at 92-93.

[21] *Id*. at 93.

The Ruling of the CA

In the assailed Decision[22] dated June 14, 2019, the CA affirmed the RTC's factual findings and accordingly found proper the conviction of petitioner for the two charges. However, it made modifications as to the penalties imposed.

Citing *People v. Caoili*,[23] the CA held that when the victim at the time of the commission of the offense is aged 12 years or over but under 18 years, or is 18 or older but unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5 (b), Article III of RA 7610.

The CA ruled that the correct penalty for Lascivious Conduct under Section 5 (b) of RA 7610 is the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

The CA modified the damages awarded by the RTC with respect to the case for Lascivious Conduct. Aside from the fine of ₱15,000.00 and moral damages of ₱50,000.00 already imposed by the RTC, the CA ordered petitioner to pay ₱50,000.00 as civil indemnity and increased the amount of exemplary damages to ₱50,000.00. The CA also ordered the payment of interest on the damages awarded at the rate of 6% *per annum* from the date of finality of the judgment until full payment.

On the penalty for Attempted Murder, the CA also modified the RTC's imposition, ruling that petitioner should be imposed the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum.

With respect to the award of damages in the case for Attempted Murder, the CA ruled that the amounts imposed by the RTC,

---

[22] *Id*. at 36-59.

[23] 815 Phil. 839 (2017).

to wit: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of the judgment until fully paid, are all consistent with prevailing jurisprudence.

In the assailed Resolution[24] dated September 24, 2019, the CA denied petitioner's Motion for Reconsideration[25] for lack of merit.

Thus, the instant petition.

Issue

Whether the CA erred in affirming petitioner's conviction for: (1) Lascivious Conduct under Section 5 (b), Article III of RA 7610 and (2) Attempted Murder under Article 248, in relation to Article 6 of the RPC.

The Court's Ruling

The petition lacks merit.

At the outset, the Court affirms the CA in declaring that the proper nomenclature of the offense charged against petitioner for violation of Section 5 (b), Article III of RA 7610 should be Lascivious Conduct. This is in light of the fact that AAA was only 13 years old at the time of the incident.

In *People v. Tulagan*[26] *(Tulagan)*, the Court pronounced that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, "*the nomenclature of the crime should be 'Lascivious Conduct under Section 5 (b) of R.A. No. 7610' with the imposable penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the RPC.*"

---

[24] *Rollo*, pp. 61-62.

[25] CA *rollo*, pp. 103-110.

[26] G.R. No. 227363, March 12, 2019.

Lascivious Conduct is defined in the rules and regulations of RA 7610, known as the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, as follows:

Section 2. *Definition of Terms*. — As used in these Rules, unless the context requires otherwise —

x x x x x x x x x

(h) "Lascivious conduct" means the *intentional touching*, either directly or through clothing, of the *genitalia*, anus, groin, breast, inner thigh, or buttocks, or *the introduction of any object into the genitalia*, anus or mouth, of any person, whether of the same or opposite sex, with an *intent to abuse*, humiliate, harass, degrade, or arouse or *gratify the sexual desire of any person*, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.] (Italics supplied)

Lascivious Conduct is penalized under Section 5 (b), Article III of RA 7610:

SECTION 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

x x x x x x x x x

The essential elements of Section 5 (b), Article III of RA 7610 are:

1. The accused commits the act of sexual intercourse or *lascivious conduct*.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. The child, whether male or female, is below 18 years of age.[27]

Under Section 3 (a) of RA 7610, the term "children" refers to persons below 18 years of age, or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. In this case, it is undisputed that AAA was only 13 years old at the time of the incident. This was alleged in the Information and evidenced by her Certificate of Live Birth.[28]

Petitioner, however, contends that the prosecution failed to establish the presence of the second element, *i.e.*, that the lascivious act is performed with a child exploited in prostitution or subjected to other sexual abuse. He argues that the prosecution neither alleged nor proved that AAA was exploited in prostitution or subjected to other sexual abuse besides the alleged incident.

Petitioner is mistaken.

As held in *Olivarez v. Court of Appeals*,[29] the phrase "other sexual abuse" covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult.[30] The very definition of "child abuse" under Section 3 (b)[31] of RA 7610 does not require

---

[27] *People v. Dagsa*, 824 Phil. 704, 721 (2018), citing *People v. Garingarao*, 669 Phil. 512, 523 (2011).

[28] Record (L-10873), p. 15.

[29] 503 Phil. 421 (2005).

[30] *Id*. at 432.

[31] Section 3 (b) of RA 7610 provides:

that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of; it refers to the maltreatment whether habitual or not, of the child.[32] Thus, contrary to petitioner's argument, there can be a violation of Section 5 (b), Article III of RA 7610 even though the sexual abuse against the child victim was committed only once, even without a prior sexual offense.[33]

Further, in the offense of Lascivious Conduct, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.[34] The intimidation, however, need not necessarily be irresistible.[35]

In this case, coercion or intimidation was present when petitioner, at the place where there were no houses, blocked AAA's way and then pulled her to a forested area, where he then succeeded in performing his lascivious acts with her. AAA pleaded for petitioner to stop and also tried to resist and pull herself away from him. AAA could not move when petitioner inserted his hand inside her panties and touched her private part as she was already afraid. Moreover, petitioner told AAA

SECTION 3. *Definition of Terms*. —

x x x x x x x x x

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

[32] *People v. Tulagan, supra* note 26.

[33] *Id*.

[34] See *Olivarez v. Court of Appeals, supra* note 29.

[35] *Id*.

not to be noisy.[36] Evidently, the second element of the offense is present in this case.

Considering the presence of all the elements of Lascivious Conduct under Section 5 (b), Article III of RA 7610, the RTC, as affirmed by the CA, correctly convicted petitioner for the offense charged.

With respect to the charge for Attempted Murder, the Court affirms the RTC and the CA in holding that petitioner's intent to kill AAA was proved beyond reasonable doubt. However, their finding that the qualifying circumstance of abuse of superior strength attended petitioner's attempt to kill AAA should be reversed.

Both the RTC and the CA found petitioner guilty of Attempted Murder. The crime of Murder is defined and punished by Article 248 of the RPC, as amended by RA 7659, to wit:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, *taking advantage of superior strength*, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
>
> x x x x x x x x x (Italics supplied.)

To successfully prosecute Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[37]

A felony in the attempted stage is explained in the paragraph 3, Article 6 of the RPC as follows:

---

[36] *Rollo*, pp. 45-46.

[37] *People v. Kalipayan*, 824 Phil. 173, 183 (2018), citing *People of the Philippines v. Bensig*, 437 Phil. 748, 763 (2002).

ART. 6. *Consummated, frustrated, and attempted felonies*. — x x x

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

The essential elements of an attempted felony are: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his or her spontaneous desistance.[38]

With regard to Murder in its attempted or frustrated stage, the Court, in *Yap v. People*,[39] explained:

With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the life of the person attacked. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor. Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter. The following factors are considered to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.[40]

---

[38] *Yap v. People*, G.R. No. 234217, November 14, 2018, 885 SCRA 599, 616-617 (2018), citing *Fantastico v. Malicse, Jr.*, 750 Phil. 120, 131 (2015).

[39] *Id*.

[40] *Id*. at 617.

Petitioner's intent to kill AAA was evident in his acts of carrying AAA and throwing her into the ravine of about 25 to 30 meters below the road after performing his lascivious conduct with AAA.[41] Apparently, petitioner did so in an attempt to conceal the sexual abuse he committed against AAA. When asked to estimate the depth of her fall into the ravine, AAA testified that it was comparable to falling from the third floor of a building.[42] Remarkably, the killing of AAA would have been consummated if not for the vines that wrapped around her body which prevented her from further rolling down the ravine.[43]

However, the Court disagrees with the RTC and the CA that abuse of superior strength attended petitioner's attempt to kill AAA. In this case, the RTC, as affirmed by the CA, ruled that AAA's young age of 13 years is an obvious indication that her strength could not overcome that of petitioner "who is a male and who claimed to work at a construction."[44]

"*The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.*"[45] The appreciation of abuse of superior strength depends on the age, size, and strength of the parties.[46]

It is beyond doubt that petitioner was superior to AAA in terms of age, size, and strength. Nonetheless, the records fail to show that petitioner purposely selected or took advantage

---

[41] *Rollo*, p. 92.

[42] *Id.* at 46.

[43] *Id.*

[44] *Id.* at 92.

[45] *People v. Mat-an*, 826 Phil. 512, 526 (2018), citing *Espineli v. People*, 735 Phil. 530, 544-545 (2014) and *People v. Quisayas*, 731 Phil. 577, 596 (2014).

[46] *Id.*, citing *People v. Calpito*, 462 Phil. 172, 179 (2003).

of such inequality to facilitate the commission of the crime. As held in *People v. Evasco*,[47] the assailant "must be shown to have consciously sought the advantage or to have the deliberate intent to use [his] superior advantage." Thus, to take advantage of superior strength means to purposely use force *excessively out of proportion* to the means of defense available to the person attacked.[48]

In his attempt to kill AAA after performing his lascivious acts, petitioner did not purposely use and take advantage of his superior strength. After petitioner and AAA pulled each other for about 35 minutes, petitioner merely carried AAA and threw her into the deep ravine.[49] There is no showing that he used force excessively out of proportion before throwing her into the ravine. Observably, while the Information alleges that AAA sustained multiple abrasions in the upper and lower extremities, the examination conducted by Dr. Joy Cristobal-Gonzalo was only on the hymen of AAA. Likewise, no evidence was offered by the prosecution to prove the physical injuries allegedly sustained by AAA. Thus, the Court finds erroneous the appreciation by the RTC and the CA of the qualifying circumstance of abuse of superior strength.

Consequently, the absence of any of the circumstances enumerated in Article 248 necessitates the Court to hold petitioner liable only for Attempted Homicide under Article 249 in relation to Article 6 of the RPC, as follows:

> Article 249. *Homicide*. — Any person who, not falling within the provisions of Article 246,[50] shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

---

[47] G.R. No. 213415, September 26, 2018, 881 SCRA 79.

[48] *Id.* at 91.

[49] *Rollo*, p. 46.

[50] Article 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

In an attempt to assail the credibility of AAA's testimony, petitioner claims inconsistency in AAA's statements. He points out that AAA testified during direct examination that he pulled her to the forested area[51] but stated during cross-examination that he was not able to pull her.[52] Additionally, he avers that AAA's actuation after the alleged incident lies outside human experience and fails to inspire belief. He particularly mentions AAA's testimony that right after rolling to the ground, she took her slipper and tried to look for the other one. He opines that "*a person who has just been sexually abused would not bother to look for her belongings. Instead, he/she would exert effort to escape as soon as possible.*"[53]

The Court is not swayed.

The alleged inconsistency in AAA's testimony appears minor and inconsequential. It does not hinge on any essential element of Lascivious Conduct or Attempted Homicide. Besides, leeway is generally given to minor witnesses when relating traumatic incidents of the past.[54] Jurisprudence dictates:

> x x x When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.[55]

Moreover, it bears emphasizing that "[*t*]*he credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and*

---

[51] TSN, October 17, 2016, p. 8.

[52] *Id.* at 20.

[53] *Rollo*, p. 22.

[54] *People v. Rupal*, G.R. No. 222497, June 27, 2018, 869 SCRA 66, 87, citing *People v. Divinagracia*, 814 Phil. 730, 747 (2017).

[55] *People v. Bay-od*, G.R. No. 238176, January 14, 2019, citing *People v. Piosang*, 710 Phil. 519, 526 (2013).

observed their demeanor, conduct, and attitude under grueling examination."[56] Considering the absence of any showing that the RTC's assessment on the credibility of the AAA's testimony was tainted with arbitrariness or oversight of a fact, it is entitled to great weight, if not conclusive or binding on the Court.[57]

Lastly, petitioner's bare assertion of denial and alibi cannot prevail over the positive and categorical testimony of AAA. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.[58] Likewise, alibi is one of the weakest defenses; it is not only inherently frail and unreliable but also easy to fabricate and difficult to check or rebut.[59]

As regards the penalties imposed, the Court finds a need to make modifications.

With respect to the offense of Lascivious Conduct under Section 5 (b), Article III of RA 7610, the CA imposed the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

The penalty to be imposed for the offense of Lascivious Conduct under Section 5 (b), Article III of RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. The Indeterminate Sentence Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal* medium, a divisible penalty.[60] Since none of the circumstances under Section 31[61]

---

[56] *People v. Manson*, 801 Phil. 130, 140 (2016).

[57] *Id*.

[58] *People v. XXX*, G.R. No. 235662, July 24, 2019.

[59] *Id*., citing *People v. Molejon*, 830 Phil. 519, 534 (2018).

[60] *People v. Nocido*, G.R. No. 240229, June 17, 2020.

[61] Section 31. *Common Penal Provisions*. —

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;

of RA 7610 is present, and applying the Indeterminate Sentence Law, the minimum term shall be taken from the penalty next lower in degree which is *prision mayor* medium to *reclusion temporal* minimum, and the maximum term to be taken from *reclusion temporal* maximum, there being no other modifying circumstances attending the commission of the offense.[62]

Thus, the Court finds that the proper penalty for the offense of Lascivious Conduct under Section 5 (b), Article III of RA 7610 should be the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as the minimum term, to twenty (20) years of *reclusion temporal* maximum, as the maximum term.

With respect to the crime of Attempted Homicide, Article 249 of the RPC provides the penalty of *reclusion temporal* for Homicide in its consummated stage. Article 51 of the RPC states that the penalty for an attempted felony is two (2) degrees lower

---

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

(d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is *prision correccional* or *arresto mayor*, the penalty of suspension shall also be imposed; and

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[62] *People v. Nocido*, *supra* note 60.

than that prescribed for the consummated felony. The penalty that is two (2) degrees lower than *reclusion temporal* is *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years.

Under the Indeterminate Sentence Law, the maximum term of the indeterminate sentence shall be taken in view of the attending circumstances that could be properly imposed under the rules of the RPC, and the minimum term shall be within the range of the penalty next lower to that prescribed by the RPC. Thus, the maximum term of the indeterminate sentence shall be taken within the range of *prision correccional*, depending on the modifying circumstances. In turn, the minimum term of the indeterminate penalty to be imposed shall be taken from the penalty one degree lower of *prision correccional*, that is, *arresto mayor* with a duration of one (1) month and one (1) day to six (6) months.

In view of the absence of any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years and four (4) months and one (1) day to four (4) years and two (2) months; and the minimum term shall be taken within the range of *arresto mayor*. Hence, the penalty for the crime of Attempted Homicide is the indeterminate penalty of six (6) months of *arresto mayor*, as the minimum term, to four (4) years and two (2) months of *prision correccional*, as the maximum term.

The Court also finds a need to modify the monetary awards.

As to the amount of damages for the offense of Lascivious Conduct, the Court affirms the CA in upholding the moral damages of ₱50,000.00 already imposed by the RTC, in increasing the exemplary damages to ₱50,000.00, and in imposing the additional amount of ₱50,000.00 as civil indemnity. These amounts are in accordance with prevailing jurisprudence.[63]

---

[63] See *People v. Tulagan*, *supra* note 26.

However, for lack of legal basis, the imposed fine of ₱15,000.00 should be deleted.

As regards the damages for the crime of Attempted Homicide, the case of *People v. Jugueta*[64] instructs that the accused shall be liable only for ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages. Further, no exemplary damages shall be awarded in view of the absence of any aggravating circumstance.[65]

Lastly, in consonance with prevailing jurisprudence, all the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the judgment until fully paid.[66]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated June 14, 2019 and the Resolution dated September 24, 2019 of the Court of Appeals in CA-G.R. CR No. 42179 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Shariff Uddin *y* Sali is found guilty beyond reasonable doubt of:

(1) *Lascivious Conduct* under Section 5 (b), Article III of Republic Act No. 7610 and is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to twenty (20) years of *reclusion temporal* maximum, as maximum, and to pay the victim, AAA, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages; and

(2) *Attempted Homicide* under Article 249 in relation to paragraph 3 of Article 6 of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum,

---

[64] 783 Phil. 806 (2016).

[65] *People v. Evasco*, G.R. No. 213415, September 26, 2018.

[66] See *People v. Tulagan*, *supra* note 26.

> to four (4) years and two (2) months of *prision correccional*, as maximum. He is further ordered to pay the victim, AAA, the amounts of ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages.

The civil indemnity, moral damages and exemplary damages so imposed are subject to interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen (*Chairperson*), *Hernando*, *Delos Santos*, and *Rosario, JJ.*, concur.

SECOND DIVISION

[G.R. No. 250908. November 23, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ARIEL QUIÑONES *y* LOVERIA,** *Accused-Appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine record, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT); ATTEMPTED ILLEGAL SALE OF DANGEROUS DRUGS, ELEMENTS THEREOF.—** In order to secure the conviction of an accused charged with Attempted Illegal Sale of Dangerous Drugs, the prosecution must be able to prove: (*a*) the **identities of the buyer and the seller**, the object, and the consideration; and (*b*) the fact that the sale of the illegal drugs was attempted. A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance.

3. **ID.; ID.; ID.; ID.; AN ACCUSED WHO WAS NOT HIMSELF FOUND IN POSSESSION OF ILLEGAL DRUGS CANNOT BE FOUND GUILTY BASED ON AN UNTRUSTWORTHY TESTIMONY OF THE ALLEGED RECIPIENT THEREOF SANS ANY OTHER INDEPENDENT EVIDENCE OF HIS IDENTITY AS THE SOURCE OR SELLER OF THE DRUGS.—** [T]he identities of the seller and the buyer are proven by the testimonies of the apprehending officers, especially in

cases involving buy-bust operations where the accused was caught *in flagrante delicto*. This case, however, is peculiar, in that accused-appellant was not himself found in possession of the illegal drugs subject of the attempted sale. Instead, the entire basis of the charge against him — and of his eventual conviction as well — was the testimony of Caparas, a fellow inmate in whose custody the *shabu* was actually found and who named accused-appellant as the source/seller thereof Caparas likewise identified another inmate, Cua, as the intended recipient/buyer of the *shabu*.

However, Caparas' bare testimony ascribing criminal liability upon accused-appellant is neither trustworthy nor sufficient to convict the latter. Lest it be forgotten, it was Caparas himself who was found in possession of the illegal drugs. To Our mind, therefore, it was convenient for Caparas to have named accused-appellant as the source/seller of the illegal drugs in order to evade criminal liability, as he has evidently done. Curiously, records are bereft of showing that despite having been accosted by JO Romana in custody of the illegal drugs, Caparas had not been charged with illegal possession together with accused-appellant. Parenthetically, the RTC, as affirmed by the CA, ruled that in the absence of allegations of conspiracy between Caparas and accused-appellant, the case had to be judged on the basis of their individual acts. If such is the case, accused-appellant cannot be found guilty based on the mere statements of Caparas sans any other independent evidence indubitably pointing to him as the source/seller of the illegal drugs subject of this case. Contrary to the findings of the courts *a quo*, the testimonies of JO Romana and Warden Pajarillo did not corroborate Caparas' identification of accused-appellant as the source/seller of the said illegal drugs, containing as it did only details of the latter's arrest and the proceedings that transpired thereafter.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; BURDEN OF PROOF; THE PROSECUTION BEARS THE BURDEN TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT AND TO PROVE EACH AND EVERY ELEMENT OF THE CRIME CHARGED IN THE INFORMATION.— In all criminal prosecutions, the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the

> prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the prosecution must rely on the strength of its own evidence and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, hence, he must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Ariel Quiñones *y* Loveria (accused-appellant) assailing the Decision[2] dated November 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 10050, which affirmed the

---

[1] See Notice of Appeal dated January 16, 2019; *rollo*, pp. 26-27.

[2] *Id.* at 3-25. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Franchito N. Diamante and Ma. Luisa C. Quijano-Padilla concurring.

[3] CA *rollo*, pp. 69-76. Penned by Presiding Judge Roberto A. Escaro.

Judgment[3] dated September 4, 2017 of the Regional Trial Court of Daet, Camarines Norte, Branch 38 (RTC) convicting accused-appellant of the crime of **Attempted Illegal Sale of Dangerous Drugs**, as defined and penalized under Section 5,[4] in relation to Section 26,[5] Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC charging accused-appellant of Illegal Sale of Dangerous Drugs. The prosecution alleged that at around 3:40 in the afternoon of June 14, 2015, Jail Officer Niel A. Romana (JO Romana) was conducting a roll call of the inmates at the second floor of the Camarines Norte Provincial Jail when he accosted Rogelio B. Caparas (Caparas), a minor and trustee-inmate, and asked him where he was going. When Caparas answered that

---

[4] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[5] SEC. 26. *Attempt or Conspiracy*. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

(a) Importation of any dangerous drug and/or controlled precursor and essential chemical;

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

(c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;

(d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and

(e) Cultivation or culture of plants which are sources of dangerous drugs.

[6] Records, pp. 1-2.

he was heading to the cell of inmate Frederick Cua (Cua), JO Romana bodily searched him and recovered from his pocket a small piece of paper sealed with black electrical tape. When he opened it, he saw a handwritten note,[7] a small plastic sachet containing 0.0944 gram of white crystalline substance, and a rolled aluminum foil. JO Romana confiscated the items, reported the incident to his supervisor, and marked the items in the presence of accused-appellant. Thereafter, the seized items were inventoried and photographed in the presence of Philippine Drug Enforcement Agency Agent Enrico Barba, Barangay Officials Jose Juan Carranceja, Jr. and Richard Rafael, and Media Representative Ricky Pera. After qualitative examination at the crime laboratory where they were brought, the seized items tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[8] Provincial Warden Reynaldo Pajarillo (Warden Pajarillo) of the Camarines Norte Provincial Jail corroborated JO Romana's testimony on material points.[9]

Caparas himself testified that the note and plastic sachet of *shabu* sealed with electrical tape that JO Romana confiscated from him was given by accused-appellant, who instructed him to deliver its contents to Cua.[10]

In defense, accused-appellant denied the charges against him, and instead, claimed that during that time, he was at his cell located at the first floor of the provincial jail when he was

---

[7] The note written in the piece of paper reads:

"PADs,

1K YAN, MOIST LANG PERO AYOS YAN. HIDAP KAYA MAGPALUSOT SI TROPA KO, SAKA TAGHIDAP SA LAYA NGAYON, GUSTO KO MAKATABANG SA MGA AKI KO MASKI PANG ALLOWANCE MAN LANG, SIMPLE LANG A PAG-ABOT BAYAD O KAYA PAPAKUHA KO NA LANG SA TAONG ALAM MONG MALAPIT SAAKIN. WALA SA LOOB NG SELDA NASA PASILYO LANG. KILALA MO AT MANUGANG. HEHE." (*Id.* at 18)

[8] See Chemistry Report No. D-111-15; *id.* at 17.

[9] See *rollo*, pp. 5-6.

[10] See *id.* at 6-7.

summoned by Caparas to proceed to the Office of the Provincial Warden. Thereat, he saw Caparas, JO Romana, and three (3) other persons, and was informed of the accusations against him, all of which he denied. He also alleged that he refused to sign the inventory report since he was not the owner of the seized items. Finally, he averred that he never went out of his cell from 3:30 in the afternoon to 9:00 in the evening.[11]

The RTC Ruling

In a Judgment[12] dated September 4, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of **Attempted Illegal Sale of Dangerous Drugs**, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. It gave credence to the testimony of the prosecution witnesses that the *shabu* came from accused-appellant and was intended to be delivered to another inmate, Cua, on account of accused-appellant's failure to prove that the prosecution witnesses were motivated by ill motive in implicating such a serious crime against him. Further, while accused-appellant was not caught *in flagrante* delivering the plastic sachet containing *shabu*, it was established through testimonial evidence, particularly the testimony of Caparas, that the note and plastic sachet containing *shabu* came from him. Finally, finding no allegation of conspiracy between Caparas and accused-appellant, the RTC held that the case shall be judged based on their individual acts.[13]

Aggrieved, accused-appellant appealed[14] to the CA.

The CA Ruling

In a Decision[15] dated November 29, 2018, the CA **affirmed** accused-appellant's conviction, finding that his bare denial cannot

---

[11] See *id.* at 8.

[12] CA *rollo*, pp. 69-76.

[13] See *id.* at 74-76.

[14] Records, p. 131.

[15] *Rollo*, pp. 3-25.

prevail over the positive testimony of the prosecution witnesses stating that he was the source of the *shabu* which was supposed to be delivered and/or sold to Cua. Likewise, the CA found that the prosecution was able to establish all the elements of the crime charged, and that the integrity of the seized item was preserved in light of the officers' compliance with the requirements of the chain of custody rule.[16]

Hence, this appeal.[17]

The Issue Before the Court

The core issue for the Court's resolution is whether or not accused-appellant is guilty beyond reasonable doubt of Attempted Illegal Sale of Dangerous Drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[18] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[19]

In convicting accused-appellant of Attempted Illegal Sale of Dangerous Drugs, as defined and penalized under Section 5, in relation to Section 26, Article II of RA 9165, the courts *a quo* relied heavily on the testimony of Caparas, another inmate. The crux of Caparas' testimony was that when JO Romana frisked him, JO Romana found a note sealed with electrical tape containing *shabu*, which Caparas claimed was given to him by accused-appellant for delivery to Cua.

---

[16] See *id.* at 10-25.

[17] *Id.* at 26-27.

[18] See *People v. Dahil*, 750 Phil. 212, 255 (2015).

[19] *People v. Comboy*, 782 Phil. 187, 196 (2016); citation omitted.

In order to secure the conviction of an accused charged with Attempted Illegal Sale of Dangerous Drugs, the prosecution must be able to prove: (*a*) the **identities of the buyer and the seller**, the object, and the consideration;[20] and (*b*) the fact that the sale of the illegal drugs was attempted. A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance.[21]

After a meticulous review of the case vis-à-vis the elements of the crime for which accused-appellant was convicted, the Court finds that ***reasonable doubt*** exists with regard to the identities of the buyer and the seller.

Normally, the identities of the seller and the buyer are proven by the testimonies of the apprehending officers, especially in cases involving buy-bust operations where the accused was caught *in flagrante delicto*.[22] This case, however, is peculiar, in that accused-appellant was not himself found in possession of the illegal drugs subject of the attempted sale. Instead, the entire basis of the charge against him — and of his eventual conviction as well — was the testimony of Caparas, a fellow inmate in whose custody the *shabu* was actually found and who named accused-appellant as the source/seller thereof. Caparas likewise identified another inmate, Cua, as the intended recipient/buyer of the *shabu*.

However, Caparas' bare testimony ascribing criminal liability upon accused-appellant is neither trustworthy nor sufficient to convict the latter. Lest it be forgotten, it was Caparas himself who was found in possession of the illegal drugs. To Our mind, therefore, it was convenient for Caparas to have named accused-

---

[20] See *People v. Año*, 828 Phil. 439, 447-448 (2018); emphasis supplied, citation omitted.

[21] *People v. Buniag*, G.R. No. 217661, June 29, 2019; citation omitted.

[22] See *People v. Gatlabayan*, 669 Phil. 240, 253-254 (2011).

appellant as the source/seller of the illegal drugs in order to evade criminal liability, as he has evidently done. Curiously, records are bereft of showing that despite having been accosted by JO Romana in custody of the illegal drugs, Caparas had not been charged with illegal possession together with accused-appellant. Parenthetically, the RTC, as affirmed by the CA, ruled that in the absence of allegations of conspiracy between Caparas and accused-appellant, the case had to be judged on the basis of their individual acts. If such is the case, accused-appellant cannot be found guilty based on the mere statements of Caparas sans any other independent evidence indubitably pointing to him as the source/seller of the illegal drugs subject of this case. Contrary to the findings of the courts *a quo*, the testimonies of JO Romana and Warden Pajarillo did not corroborate Caparas' identification of accused-appellant as the source/seller of the said illegal drugs, containing as it did only details of the latter's arrest and the proceedings that transpired thereafter.

As it stands, aside from the bare testimony of Caparas, there is no other evidence to prove ***beyond moral certainty*** that it was accused-appellant who instructed Caparas to give the note and the *shabu* to Cua. To accept Caparas' testimony on this score would be to countenance convictions based on empty accusations, as well as evasions of criminal liability, in the case of Caparas, who, was in actual possession of the illegal drugs. It is worthy to emphasize that even the note that was seized from Caparas does not categorically reflect the names of *either* accused-appellant as the seller or Cua as the recipient/buyer, to wit:

"PADS,

1K YAN, MOIST LANG PERO AYOS YAN. HIDAP KAYA MAGPALUSOT SI TROPA KO, SAKA TAGHIDAP SA LAYA NGAYON, GUSTO KO MAKATABANG SA MGA AKI KO MASKI PANG ALLOWANCE MAN LANG. SIMPLE LANG A PAG-ABOT BAYAD O KAYA PAPAKUHA KO NA LANG

SA TAONG ALAM MONG MALAPIT SAAKIN. WALA SA LOOB NG SELDA NASA PASILYO LANG. KILALA MO AT MANUGANG. HEHE."[23]

Accordingly, the element of the **"identities of the buyer and the seller"** was not sufficiently established with absolute moral certainty by the prosecution, thereby leaving a gaping room for reasonable doubt to exist as to accused-appellant's guilt.

In all criminal prosecutions, the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the prosecution must rely on the strength of its own evidence and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, hence, he must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[24]

In sum, it behooves this Court not to blindingly accept the flagrantly wanting evidence of the prosecution in this case. Undoubtedly, the prosecution failed to meet the required quantum of evidence sufficient to support a conviction, in which case,

---

[23] Records, p. 18.

[24] *People v. Claro*, 808 Phil. 455, 468-469 (2017); citation omitted.

the constitutional presumption of innocence prevails. To stress, when moral certainty as to culpability hangs in the balance, ***acquittal on reasonable doubt*** inevitably becomes a matter of right.[25]

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 10050 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Ariel Quiñones *y* Loveria is **ACQUITTED** of the crime of Attempted Illegal Sale of Dangerous Drugs on the ground of reasonable doubt.

Let entry of judgment be issued immediately.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and *Rosario,*[*] *JJ.*, concur.

---

[25] *People v. Roble*, 663 Phil. 147, 165-166 (2011).

[*] Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

EN BANC

[A.C. No. 12081. November 24, 2020]
(Formerly CBD Case No. 14-4225)

ALBERTO LOPEZ, *Complainant, v.* **ATTY. ROSENDO C. RAMOS,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; GROSS NEGLIGENCE; NOTARIZING WITHOUT ASCERTAINING THE IDENTITY OF THE PARTIES TO A DOCUMENT, WHICH TURNED OUT TO BE FALSIFIED, AMOUNTS TO GROSS NEGLIGENCE.— A notary public should not notarize a document unless the persons who signed it are the same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Otherwise, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.

In this case, respondent was grossly negligent in the performance of his duties as a notary public. *First*, respondent failed to ascertain beforehand, the identity of the vendor, when he notarized the deeds of sale. The impostor signed as "Aurea Munar," but the name on the deeds of sale and the title was "Aurea Munar Masangkay." As to the witnesses Benjamin and Raymundo, they signed their names in two different ways on the two (2) deeds of sale. These did not elicit his suspicion as notary, wherein he could have had taken more precautions in ascertaining the identity of the vendor. *Second*, the deed of sale which respondent prepared and notarized, was proved to have been falsified.

2. ID.; ID.; NOTARIZING A SECOND DEED OF SALE WITH LOWER CONSIDERATION TO EVADE CORRECT PAYMENT OF TAXES MAKES THE NOTARY PUBLIC LIABLE FOR ABETTING AN ACTIVITY AIMED AT DEPRIVING THE GOVERNMENT OF THE RIGHT TO COLLECT THE CORRECT TAXES DUE.— [T]here are

two valid deeds for the same property, with identical registration, page and book numbers, in the notarial portion. The preparation of the deed with a lower consideration was used to evade payment of taxes.

. . . Respondent cannot escape liability for making an untruthful statement in a public document for an unlawful purpose. As the second deed indicated an amount lower than the actual price paid for the property sold, respondent abetted in depriving the Government of the right to collect the correct taxes due. Respondent violated Rule 1.02, Canon 1 of the CPR, . . .

Respondent assisted the contracting parties in an activity aimed at defiance of law, and displayed lack of respect for and made a mockery of the solemnity of the oath in an Acknowledgment. When the respondent notarized an illegal and fraudulent document, he is entitling full faith and credit upon the face of the document, which it does not deserve, considering its nature and purpose.

The act of notarization is imbued with substantive public interest wherein a private document is converted into a public document, which results in the document's admissibility in evidence without further proof of its authenticity.

It is the notary public's duty to observe utmost care in complying with the formalities intended to protect the integrity of the notarized document and the act or acts it embodies.

3. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; NOTARIES PUBLIC SHOULD GUARD AGAINST ANY ILLEGAL OR IMMORAL ARRANGEMENT OR AT LEAST REFRAIN FROM BEING A PARTY TO ITS CONSUMMATION.— Aside from the duty of the notary public to ascertain the identity of the affiant and the voluntariness of the declaration, it is also incumbent upon him to guard against any illegal or immoral arrangement or at least refrain from being a party to its consummation. Rule IV, Section 4(a) of the 2004 Rules on Notarial Practice prohibits notaries public from performing any notarial act for transactions similar to the subject deeds of sale, . . .

Despite knowledge of the illegal purpose of evading the payment of proper taxes due, respondent proceeded to notarize

the second deed of sale. Instead of accommodating the request of his client, Benjamin, respondent, being a member of the legal profession, should have stood his ground and not yielded to the request of his client. Respondent should have been more prudent and unfaltering in his solemn oath neither to do falsehood nor consent to the doing of any. As a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession.

4. ID.; ID.; ID.; ENTRIES IN THE NOTARIAL REGISTER; GIVING IDENTICAL REGISTRATION, PAGE, AND BOOK NUMBERS TO TWO SEPARATE DOCUMENTS IS A VIOLATION OF THE NOTARIAL RULES.— When respondent gave the second deed of sale the same registration, page and book numbers as the first, respondent violated Section 2, Rule VI of the 2004 Rules on Notarial Practice[.]

5. ID.; ID.; PROPER PENALTY FOR MISCONDUCT OR VIOLATION OF THE RULES ON NOTARIAL PRACTICE AND VIOLATION OF OATH AS LAWYER.— We ruled that the Court may suspend or disbar a lawyer for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.

. . .

In the instant case, we hold that respondent suffer the penalty of suspension and revocation of his notarial commission for two (2) years, for violating the 2004 Rules on Notarial Practice. This is in accord with the current jurisprudence and the recommendation by the IBP Board of Governors.

. . .

. . . [W]ith respect to respondent's suspension from the practice of law, we hold that respondent's failure to faithfully comply with the rules on notarial practice, and his violation of his oath as lawyer when he prepared and notarized the second deed for the purpose of avoiding the payment of the correct amount of taxes, shall be meted with a penalty of a two (2)-year suspension from the practice of law. The said penalty is proper and commensurate to the infraction committed by respondent.

APPEARANCES OF COUSEL

Danilo A. Soriano for complainant.

D E C I S I O N

PERALTA, *C.J.*:

The instant administrative case stemmed from the complaint-affidavit[1] dated May 27, 2014 filed by Alberto C. Lopez (*Lopez*) before the Integrated Bar of the Philippines (*IBP*), charging Atty. Rosendo Cruz Ramos (*respondent*) with violation of Canon 1 of the Code of Professional Responsibility (*CPR*) by willfully aiding the parties to the sale of a parcel of land, in evading or defeating the payment of the proper amount of taxes due thereon; and for gross negligence in the performance of his duties as a notary public resulting in the notarization and registration of a forged deed of sale of the subject property.

The Facts

In the complaint-affidavit, Lopez alleged that on January 5, 2005, he was the vendee of a parcel of land at No. 362-A L. Ibarra Street, Tondo, Manila. The property was originally covered under a Transfer Certificate of Title No. *(TCT)* 143583 before the Register of Deeds of Manila, in Aurea Munar Masangkay's name.

Subsequently, Lopez discovered that on February 2, 1989, TCT 143583 had been cancelled, upon the issuance of TCT 184238 to Placida Ronquillo *(Ronquillo)*. According to Lopez, it was thru a forged deed of sale notarized by the respondent, which enabled the regular issuance of a new title in Ronquillo's name.

In Criminal Case No. 90-83237 for Falsification of Public Document filed by Aurea Munar Masangkay before the Regional Trial Court *(RTC)* of Manila, Branch 53, respondent was initially

[1] *Rollo,* pp. 2-5.

included as defendant, together with Ronquillo, and Benjamin M. Masangkay *(Benjamin)*. Upon the City Prosecutor's reinvestigation, respondent was dropped from the information. Ms. Masangkay avers that both deeds are spurious because her signatures were falsified.[2] She contends that at the time that the deeds were executed, she was in Vancouver, Canada.[3] This was proven thru an Affidavit[4] she duly executed before the Philippine Consulate Office in Vancouver, Canada. She alleged that she only came to know of the existence of the two (2) deeds when she came back to the Philippines and verified these before the Register of Deeds of Manila. She discovered that the title of her property was already transferred in Ronquillo's name, and that the Community Tax Certificates *(CTCs)* in her name were procured by the vendee Ronquillo.[5]

On October 24, 2002, the RTC convicted Ronquillo. The case in the trial court was archived with respect to the remaining accused, Benjamin, one of the decedent's sons, who had accompanied the woman who, in turn, posed as his mother and signed *"Aurea Munar"* on the deeds of sale. Benjamin has remained at-large, while the said woman has remained unseen and unidentified.

In the course of the proceedings in the above-mentioned criminal case, it was determined that there were two (2) deeds of sale executed by, and for the benefit of, the same parties, and that these deeds have identical registration, page and book numbers, in the notarial portion. In addition, the respondent, as counsel for accused Ronquillo, introduced his own secretary, Consolacion de los Santos, who testified that respondent prepared, notarized and witnessed the execution of the two (2) deeds of sale covering the same property.

---

[2] *Id.* at 90.

[3] *Id.*

[4] *Id.*

[5] *Id.*

In a Decision[6] dated January 12, 2005, the Court of Appeals *(CA)* acquitted Ronquillo due to insufficiency of evidence. Thus, it was held:

> [T]here is no question that the signature of private complainant [Aurea M. Masangkay] in the deed of sale was falsified. It is not denied likewise that her son Benjamin forcibly got the original copy of the title from his brother, Emilio, and the said property was offered to appellant [Ronquillo] thru one Jose Raymundo and that [Ronquillo] agreed to buy the property for a price of [₱]130,000.00.[7]

In Lopez's complaint-affidavit, he avers that respondent prepared two (2) deeds of sale; one for ₱130,000.00 and another for ₱30,000.00, with the purpose of helping the alleged seller minimize the payment of taxes.[8] At the time, a price of ₱30,000.00 would have exempted the transaction from capital gains tax.[9]

Also, Lopez argues that respondent was grossly negligent in the performance of his duties as a notary public when the latter failed to exercise prudence in ascertaining that the identity of the persons who signed the deeds before him were the same persons who executed and personally appeared before him. According to Lopez, respondent did not attempt to identify the impostor beyond asking and getting the latter's alleged residence certificate number.[10] The impostor signed as "Aurea Munar," but the name on the deeds of sale, as well as the title, was "Aurea Munar Masangkay."[11] Similarly, the witnesses, Benjamin and Jose Raymundo *(Raymundo)*, signed their names in two

---

[6] Penned by Associate Justice Josefina Guevarra-Salonga, with Associate Justices Conrado M. Vasquez, Jr. (Chairman) and Fernanda Lampas-Peralta, concurring; *id.* at 88-96.

[7] *Id.* at 94.

[8] *Id.* at 3.

[9] *Id.*

[10] *Id.* at 3.

[11] *Id.*

obviously different ways on the two (2) deeds of sale.[12] These did not elicit his suspicion as notary.[13]

On the other hand, respondent alleged that he prepared and notarized only one (1) Deed of Sale dated January 26, 1989, with the amount of One Hundred Thirty Thousand Pesos (₱130,000.00) as consideration. Respondent argues that upon rigorous inspection of the deeds of sale, it appears that only certified photocopies and not certified true copies of the said documents were attached to the complaint-affidavit.[14] He posits that since the photocopies of the deeds of sale are mere secondary evidence, these shall be inadmissible, unless it is shown that the original is unavailable.[15] For this reason, the contention that he drafted two (2) deeds of sale for Ronquillo must not be given credence due to lack of competent evidence.[16]

As regards the issue that respondent was grossly negligent in the performance of his duties as a notary public when he notarized forged deeds of sale in favor of Ronquillo, respondent argues that this allegation is a mere speculation that has yet to be proven before a judicial tribunal.[17] At the time that respondent submitted his Position Paper before the Commission on Bar Discipline *(CBD)*, and raised this argument, the case for Falsification of Public Document has yet to be resolved by the RTC.

As to the identity of vendor Aurea Munar Masangkay, respondent posits that he exerted efforts in verifying Ms. Masangkay's true identity through the latter's CTC.[18] At that time, the CTC was sufficient proof of identity when the sale

---

[12] *Id.*

[13] *Id.*

[14] *Id.* at 136.

[15] *Id.* at 136-137.

[16] *Id.* at 137.

[17] *Id.* at 138.

[18] *Id.*

was executed in 1989, prior to the promulgation of the 2004 Rules on Notarial Practice.[19]

In a Report and Recommendation[20] dated January 28, 2015, Commissioner Erwin L. Aguilera found respondent administratively liable on account of his notarizing a deed of sale without ascertaining beforehand the identity of the vendor, in violation of the Notarial Law and the lawyer's oath; and in aiding his client Ronquillo in evading the payment of the proper amount of taxes due on sale. According to Commissioner Aguilera, respondent did not offer any tenable defense to justify his actions.

Thus, Commissioner Aguilera concluded as follows:

> WHEREFORE, respondent ATTY. ROSENDO C. RAMOS is hereby SUSPENDED from the practice of law for a period of one (1) year. In addition, his present notarial commission, if any, is hereby Revoked, and he is Disqualified from reappointment as a notary public for a period of two (2) years. He is further WARNED that any similar act or infraction in the future shall be dealt with more severely.
>
> RESPECTFULLY SUBMITTED.[21]

On the matter of the criminal case of Falsification of Public Document, the issue has already been decided with finality by the CA, wherein documents annexed to the affidavit-complaint were indeed falsified and absolutely simulated.[22]

Since the original deed of sale (with ₱130,000.00 consideration) forms part of the Original Records of Criminal Case No. 83231, and its genuineness and due execution have been certified by the CA, these rendered the deed as relevant and competent, as required by the rules on evidence.[23] With

---

[19] *Id.*

[20] *Id.* at 150-161.

[21] *Id.* at 161.

[22] *Id.* at 156.

[23] *Id.*

the two deeds valid, the preparation of the deed with a lower consideration was used to evade payment of taxes due to the government. This act is unbecoming of a lawyer, an officer of the court, who is expected to implement the laws of the land. Respondent violated Rule 1.02, Canon 1 of the CPR.

Respondent also failed to comply with Section 2 (e), Rule VI of the 2004 Rules on Notarial Practice when he gave the same document the same registration number, page number, and book number as the first. Said Section 2 (e) requires that each instrument or document, executed, sworn to, or acknowledged before the notary public shall be given a number corresponding to the register.

On April 18, 2015, the Board of Governors of the IBP issued a Resolution No. XXI-2015-256,[24] quoted as follows:

> Resolved to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering Respondent's violation of the Rules on Notarial Practice of 2004. Hence, Atty. Rosendo C. Ramos['] notarial commission[,] if recently commissioned[,] is immediately REVOKED. Furthermore, he is DISQUALIFIED from being commissioned as Notary Public for two (2) years and SUSPENDED from the practice of law for six (6) months.

Respondent filed a Motion for Reconsideration before the Board of Governors of the IBP. On June 17, 2017, the Board of Governors issued a Resolution[25] denying the Motion for Reconsideration, the dispositive portion of which, is quoted on the Notice of Resolution:

> RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.[26]

---

[24] *Id.* at 149-150.

[25] *Id.* at 170.

[26] *Id.*

We sustain the IBP's findings and recommendations that there is a clear basis for disciplining the respondent as a member of the bar and as notary public.

A notary public should not notarize a document unless the persons who signed it are the same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.[27] Otherwise, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.[28]

In this case, respondent was grossly negligent in the performance of his duties as a notary public. *First*, respondent failed to ascertain beforehand, the identity of the vendor, when he notarized the deeds of sale. The impostor signed as "Aurea Munar," but the name on the deeds of sale and the title was "Aurea Munar Masangkay." As to the witnesses Benjamin and Raymundo, they signed their names in two different ways on the two (2) deeds of sale. These did not elicit his suspicion as notary, wherein he could have had taken more precautions in ascertaining the identity of the vendor. *Second*, the deed of sale which respondent prepared and notarized, was proved to have been falsified. To reiterate, in Criminal Case No. 90-83231 for Falsification of Public Document, the CA held:

> [T]here is no question that the signature of private complainant [Aurea M. Masangkay] in the deed of sale was falsified. It is not denied likewise that her son Benjamin forcibly got the original copy of the title from his brother, Emilio, and the said property was offered to appellant [Ronquillo] thru one Jose Raymundo and that [Ronquillo] agreed to buy the property for a price of [₱]130,000.00.[29]

As regards the existence of two (2) deeds of sale, respondent's secretary, De los Santos testified on the matter, in Criminal Case No. 90-83231. She stated that on the same occasion,

---

[27] *Spouses Soriano v. Ortiz, Jr.*, A.C. No. 10540, November 28, 2019.

[28] *Id.*

[29] *Rollo*, p. 94.

respondent prepared, notarized and witnessed the execution of the two (2) deeds of sale. She further testified that Atty. Ramos decided to prepare, notarize, and witness the execution of the said deeds, in order to minimize the payment of capital gains tax. She also mentioned that she saw the actual payment for the same property for the price of One Hundred Thirty Thousand (₱130,000.00) Pesos:

Q: Actually, how many Deed of Sale was (sic) dictated to you by Attorney Ramos?
A: There were two (2) Deeds of Sale, sir.

x x x x

Q: Can you tell the Court the consideration of the two (2) Deeds of Sale?
A: The other (sic) is One Hundred Thirty Thousand (₱130,000.00) Pesos, while the other is Thirty Thousand (₱30,000.00) Pesos.

Atty. Ramos
Q: Do you know why there is a need to prepare two (2) Deeds of Sale, one for One Hundred Thirty Thousand (₱130,000.00) Pesos and the other is for Thirty Thousand (₱30,000.00) Pesos only?
A: He said that it would [be] for the capital gain[s] tax, sir.

x x x x

Court:
What capital gain[s] tax?
A: He said to minimize the payment of capital gain[s] tax, your Honor.

Atty. Ramos
Q: Were you able to prepare the two (2) Deeds of Sale?
A: Yes, sir.[30]

x x x x

[ATTY. BERNARDINO SANCHEZ — CROSS-EXAMINATION Atty. Sanchez]

---

[30] *Id.* at 21-23.

Court:
Q: Were both sets of documents the two (2) Deeds of Sale one for One Hundred Thirty Thousand (₱130,000.00) Pesos and another for Thirty Thousand (₱30,000.00) Pesos notarize[d] on the same [occasion]?
A: Yes, sir.[31]

x x x x

Atty. Sanchez
Q: All right, after Mr. Benjamin Masangkay told Attorney Ramos that the purpose of, preparing those two (2) Deeds of Sale one for a consideration of Thirty Thousand (₱30,000.00) Pesos[,] the other one is for a consideration of One Hundred Thirty Thousand (₱130,000.00) [Pesos] and that was intended to minimize payments of capital gain[s] tax, Attorney Ramos cause[d] the preparation of the Deed of Sale?

Atty. Ramos
Objection. The two (2) documents your Honor, were ask[ed] to be prepared as per request only we have no alternative but to follow the request of the client your Honor.

x x x x

Stenographer
(Question)
After Mr. Benjamin Masangkay told Attorney Ramos that the purpose of preparing those two (2) Deeds of Sale one for a consideration of Thirty Thousand (₱30,000.00) Pesos[,] the other one is for a consideration of One Hundred Thirty Thousand (₱130,000.00) Pesos and that was intended to minimize payments of capital gain[s] tax, Attorney Ramos cause[d] the preparation of the Deed of Sale?

Atty. Ramos
I move to strike out the [word] minimize your Honor, that was the intention of the parties but not the intention of Attorney Ramos to minimize it. [T]hat was the intention of the parties.

Court
Answer.
A: Yes, sir.

x x x x

---

[31] *Id.* at 30.

Atty. Sanchez
Q: You said you were present when payment was made[.] [D]id you see the actual payment?
A: Yes, sir.

Atty. Sanchez
Q: How much was actually paid?
A: One Hundred Thirty Thousand (₱130,000.00) Pesos, sir.[32]

The RTC gave credence to Delos Santos' testimony. As regards the original Deed of Absolute Sale with One Hundred Thirty Thousand Pesos (₱130,000.00) as consideration, since this forms part of the Original Records of Criminal Case No. 83231, and its genuineness and due execution has been certified by the CA, these rendered the deed as relevant and competent evidence.[33] Thus, there are two valid deeds for the same property, with identical registration, page and book numbers, in the notarial portion. The preparation of the deed with a lower consideration was used to evade payment of taxes.

Based on Delos Santos' testimony, respondent told her that he drafted and notarized another instrument that did not state the true consideration of the sale, in order to reduce the capital gains tax due on the transaction. Respondent cannot escape liability for making an untruthful statement in a public document for an unlawful purpose. As the second deed indicated an amount lower than the actual price paid for the property sold, respondent abetted in depriving the Government of the right to collect the correct taxes due. Respondent violated Rule 1.02, Canon 1 of the CPR, to wit:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

Rule 1.02 — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

---

[32] *Id.* at 36-37. (Emphases ours)

[33] *Id.* at 156.

Respondent assisted the contracting parties in an activity aimed at defiance of law, and displayed lack of respect for and made a mockery of the solemnity of the oath in an Acknowledgment.[34] When the respondent notarized an illegal and fraudulent document, he is entitling full faith and credit upon the face of the document, which it does not deserve, considering its nature and purpose.[35]

The act of notarization is imbued with substantive public interest wherein a private document is converted into a public document, which results in the document's admissibility in evidence without further proof of its authenticity.[36]

It is the notary public's duty to observe utmost care in complying with the formalities intended to protect the integrity of the notarized document and the act or acts it embodies.[37] In *Gonzales v. Atty. Ramos*,[38] the Court emphasized the importance of notarization:

> By affixing his notarial seal on the instrument, the respondent converted the Deed of Absolute Sale, from a private document into a public document. Such act is no empty gesture. The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed before a notary public and appended to a private instrument. Hence,

---

[34] *Caalim-Verzonilla v. Atty. Pascua*, 674 Phil. 550, 560 (2011).

[35] *Id.*

[36] *Venson R. Ang v. Atty. Salvador B. Belaro, Jr.*, A.C. No. 12408, December 11, 2019.

[37] *Id.*

[38] 499 Phil. 345, 350 (2005).

a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.

Aside from the duty of the notary public to ascertain the identity of the affiant and the voluntariness of the declaration, it is also incumbent upon him to guard against any illegal or immoral arrangement or at least refrain from being a party to its consummation.[39] Rule IV, Section 4 (a) of the 2004 Rules on Notarial Practice prohibits notaries public from performing any notarial act for transactions similar to the subject deeds of sale, to wit:

> SEC. 4. *Refusal to Notarize*. — A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:
>
> (a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral;

Despite knowledge of the illegal purpose of evading the payment of proper taxes due, respondent proceeded to notarize the second deed of sale. Instead of accommodating the request of his client, Benjamin, respondent, being a member of the legal profession, should have stood his ground and not yielded to the request of his client. Respondent should have been more prudent and unfaltering in his solemn oath neither to do falsehood nor consent to the doing of any.[40] As a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession.[41]

---

[39] *Dimayuga v. Atty. Rubia*, A.C. No. 8854, July 3, 2018.

[40] Canon 10, Rule 10.01, Code of Professional Responsibility.

> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[41] *Orola v. Baribar*, A.C. No. 6927, March 14, 2018, 858 SCRA 556, 564.

When respondent gave the second deed of sale the same registration, page and book numbers as the first, respondent violated Section 2, Rule VI of the 2004 Rules on Notarial Practice, to wit:

SEC. 2. *Entries in the Notarial Register.* —

x x x x x x x x x

> (e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

We ruled that the Court may suspend or disbar a lawyer for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.[42]

Under Section 27, Rule 138 of the Revised Rules of Court:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds herefore.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for **any deceit**, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, of for **any violation of the oath** which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In *Gonzales*, the notary public suffered the penalties of revocation of his notarial commission and disqualification from re-appointment for two years, and suspension from the practice of law for one year, when he was found to have notarized a document despite the non-appearance of one of the signatories.[43]

---

[42] *Arlene O. Bautista v. Atty. Zenaida M. Ferrer*, A.C. No. 9057, July 3, 2019.

[43] *Gonzales v. Atty. Ramos, supra* note 38, at 351.

The same penalties in *Gonzales*[44] were applied in *Dandoy v. Edayan*,[45] *Lanuzo v. Atty. Bongon*,[46] *Pantoja-Mumar v. Atty. Flores*,[47] and *Bautista v. Atty. Bernabe*.[48] In *Gonzales*, the Court ruled that by notarizing the subject Deed of Sale, respondent engaged in unlawful, dishonest, immoral or deceitful conduct.[49]

In the instant case, we hold that respondent suffer the penalty of suspension and revocation of his notarial commission for two (2) years, for violating the 2004 Rules on Notarial Practice. This is in accord with current jurisprudence and the recommendation by the IBP Board of Governors.

As regards his suspension from the practice of law, we hold that neither the one-year suspension imposed in *Gonzales* and in the other cases, nor the six-month suspension recommended by the IBP Board of Governors, is applicable to this case. The one-year and the six-month suspension from the practice of law are not commensurate to the graveness of the respondent's transgressions.

The case of *Caalim-Verzonilla v. Pascua*,[50] is analogous to the case at bar. In *Caalim-Verzonilla*, respondent Pascua prepared and notarized two Deeds of Extra-Judicial Settlement. The two deeds have been executed by and for the benefit of the same parties, and have identical registration, page and book numbers in the notarial portion. In addition, the two deeds were alleged to have been falsified, and have different considerations, with the end purpose of evading the payment of correct taxes. In *Caalim-Verzonilla*, the Court suspended Pascua from practicing law for a period of two (2) years, revoked his notarial commission,

---

[44] *Supra* note 38.

[45] A.C. No. 12084, June 6, 2018, 864 SCRA 152.

[46] 587 Phil. 658 (2008).

[47] 549 Phil. 261 (2007).

[48] 517 Phil. 236 (2006).

[49] *Gonzales v. Atty. Ramos, supra* note 38, at 351.

[50] *Supra* note 34.

disqualified him from reappointment as a notary public for a period of two (2) years, and gave him a warning that any similar act or infraction in the future shall be dealt with more sternly.

Thus, with respect to respondent's suspension from the practice of law, we hold that respondent's failure to faithfully comply with the rules on notarial practice, and his violation of his oath as lawyer when he prepared and notarized the second deed for the purpose of avoiding the payment of the correct amount of taxes, shall be meted with a penalty of a two (2)-year suspension from the practice of law. The said penalty is proper and commensurate to the infraction committed by respondent.

WHEREFORE, respondent **ATTY. ROSENDO C. RAMOS** is hereby **SUSPENDED** from the practice of law for a period of two (2) years. In addition, his present notarial commission, if any, is hereby **REVOKED**, and he is **DISQUALIFIED** from reappointment as a notary public for a period of two (2) years. He is **STERNLY WARNED** that any similar act or infraction in the future shall be dealt with more severely.

Let copies of this Decision be furnished all courts of the land through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines, and the Office of the Bar Confidant, and recorded in the personal records of the respondent.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Hernando, Inting, Zalameda, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, Carandang, and *Lazaro-Javier, JJ.*, on wellness leave.

Delos Santos, J., on leave.

EN BANC

[A.M. No. 2019-11-SC. November 24, 2020]

RE: INCIDENT OF UNAUTHORIZED DISTRIBUTION OF PAMPHLETS CONCERNING THE ELECTION PROTEST OF FERDINAND MARCOS, JR. TO THE OFFICES OF THE JUSTICES OF THE SUPREME COURT

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; CARELESSLY ALLOWING THE DISTRIBUTION OF PAMPHLETS ADVOCATING FOR A PARTY IN A CASE PENDING BEFORE THE COURT IS UNDOUBTEDLY DETRIMENTAL TO THE REPUTATION OF THE COURT AND THE ENTIRE JUDICIARY.— Laws do not define or enumerate specific acts or omissions deemed prejudicial to the best interest of the service, but they are understood to be those that "violate the norm of public accountability and diminish – – *or tend to diminish — the people's faith in the Judiciary*." Conduct prejudicial to the best interest of the service constitutes one's acts that "tarnish the image and integrity of [their] public office." It "need not be related or connected to the public officer's official functions."

As the Office of Administrative Services found, [Chief Judicial Staff Officer] Marin's act was undoubtedly detrimental to the reputation of this Court and the entire Judiciary. She carelessly allowed Jamil and Alonzo's distribution of pamphlets advocating for a party in a case pending before this Court. She facilitated the easy access these strangers had to the justices' offices without going through the scrutiny of our security personnel.

2. ID.; ID.; ID.; ID.; GROSS NEGLIGENCE; AN ERRONEOUS JUDGMENT THAT MADE IT POSSIBLE FOR A PARTY TO UNDULY INFLUENCE THE COURT IN ITS RULING IS TANTAMOUNT TO GROSS NEGLIGENCE.— Marin made it possible for Marcos to unduly influence this Court in

its ruling. She knew that both her friend Soledad and her son Edgar worked for the office of Marcos, who has a pending case before this Court. She narrated that Edgar informed her that he was filing a document. She also recounted that when Jamil and Alonzo showed up, they introduced themselves as Edgar's co-workers. We cannot excuse her for simply not knowing the contents of the pamphlets they distributed.

Marin may have made an erroneous judgment as she claims to have been victimized by a friend, but the unauthorized distribution of the pamphlet championing Marcos's cause would not have happened if not for her gross negligence. We cannot brush aside her act, despite her claim that her kindness had been abused. This Court affirms the Office of Administrative Services' findings:

> [I]t was incredibly reckless and unthinkable for a court employee ranked as high as a SC Chief Judicial Staff Officer to fail to grasp that *any direct transaction with an office of a Justice of the Supreme Court, much less all of them, is not a matter to be taken lightly. . . .*

Marin's gross negligence is not the behavior expected of court employees, more so of one who has been with this Court for more than three decades, and has held several supervisory positions. . . .

Court employees must exercise their duties with the utmost care and responsibility. It is "the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice."

3. ID.; ID.; ID.; ID.; 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; ALTHOUGH CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE IS A GRAVE OFFENSE, A LESSER PENALTY MAY BE IMPOSED IF THERE ARE MITIGATING CIRCUMSTANCES.— [F]or failing to meet the exacting standard imposed on her, Marin should be held accountable.

Under the 2017 Rules on Administrative Cases in the Civil Service, conduct prejudicial to the best interest of the service is a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year on the first offense and dismissal from service on the second.

> The 2017 Rules, however, grants the disciplining authority the discretion to consider mitigating circumstances in imposing the penalty. . . .
>
> This Court notes that Marin acknowledged her mistake, expressed remorse, and asked this Court's indulgence for a second chance. This is her first offense in her three decades of service to the Judiciary. We employ some degree of leniency and impose the penalty of fine of ₱1,000.00. However, a repetition of similar acts shall be dealt with more severely.

R E S O L U T I O N

LEONEN, *J.*:

Every court employee must exercise their duties with the utmost care and responsibility. Facilitating an unauthorized act is conduct prejudicial to the best interest of the service, and a claim of lack of knowledge cannot exculpate a court employee from liability.

This administrative matter arose from the August 9, 2019 Memorandum[1] issued by the Office of Administrative Services, which recommended that Luningning R. Marin (Marin), the chief judicial staff officer of the Philippine Judicial Academy, be found guilty of conduct prejudicial to the best interest of the service, and fined with ₱3,000.00.

On July 1, 2019, two persons, later identified as Arifa Macacua Jamil (Jamil) and Zeus Alonzo (Alonzo), entered the New Supreme Court Building. The security personnel found nothing untoward as Marin fetched them from the pedestrian entrance and told them that the two would file documents and give something to the justices' offices.[2]

Jamil and Alonzo, accompanied by Marin, and later by Process Server Joselito Santos (Santos), distributed envelopes containing a 39-page pamphlet entitled, "The Election Protest of Bongbong

---

[1] *Rollo*, pp. 1-7.

[2] Id. at 1.

Marcos, A Simplified Illustration as of May 2019,"[3] to the justices' offices. The Office of Administrative Services reported that the pamphlet advocated for a ruling in Ferdinand Marcos, Jr.'s (Marcos) favor in his election protest pending before the Presidential Electoral Tribunal.[4]

On July 11, 2019, the Office of Administrative Services received copies of the Incident Report[5] and CCTV footage from the Security Division. It then directed Marin[6] and Santos[7] to explain.

In her July 18, 2019 letter,[8] Marin narrated that on the day of the incident, Edgar G. Rozon (Edgar), son of Soledad G. Rozon, her friend and former colleague, called asking to see her as he was "going to file or distribute something"[9] in this Court. Having known him since he was a child, Marin trusted him.[10]

In Edgar's stead, Jamil and Alonzo arrived, introducing themselves as his co-workers. Marin knew that Edgar and his mother worked for former senator Marcos, but did not think much of it. She helped Jamil and Alonzo pass through the guards and accompanied them to the justices' offices, starting from the uppermost floor. When they reached the Office of the Clerk of Court *En Banc* on the third floor, they bumped into Santos, whom Marin then asked to accompany the two to the offices still unvisited.[11]

---

[3] Id.

[4] Id.

[5] Id. at 13-16.

[6] Id. at 11.

[7] Id. at 12.

[8] Id. at 7-8.

[9] Id. at 7.

[10] Id.

[11] Id. at 2 and 7-8.

In Santos's letter,[12] he explained that he was about to distribute the notice of raffle results from the Office of the Clerk of Court *En Banc* when Marin approached him, asking if he could accompany the two people she was with so she could go back to work. Since he was about to enter the justices' offices, he did not mind the two tagging along. He did not know who the two were, or what they distributed.[13]

In its August 9, 2019 Memorandum,[14] the Office of Administrative Services recommended that Santos be cleared of any administrative charges, finding that he did not actively participate in the incident. It noted the CCTV footage showing that Jamil and Alonzo were merely following Santos, who was simply busy at work.[15] He did not appear at all to be colluding with them.[16]

As to Marin, the Office of Administrative Services recommended that she be found guilty of conduct prejudicial to the best interest of the service and fined with ₱3,000.00. It found that having no knowledge on the envelope's contents does not free her from charges. It reasoned that meeting strangers instead of her friend should have put her on guard, but instead of inquiring what their business was, she even spoke to the guards on their behalf. This was deemed a grossly negligent act amounting to conduct prejudicial to the best interest of the service.[17]

Thus, the Office of Administrative Services recommended that:

1. Ms. Luningning R. Marin, SC Chief Judicial Staff Officer, Office of the Chancellor, Philippine Judicial Academy be found GUILTY of Conduct Prejudicial to the Best Interest of the Service for her complicity in the unauthorized

[12] Id. at 9.

[13] Id.

[14] Id. at 1-6.

[15] Id. at 3.

[16] Id.

[17] Id. at 3-5.

distribution of pamphlets concerning the election protest of Ferdinand "Bong Bong" Marcos, Jr. to the Offices of the Justices of the Supreme Court; and

2. She be imposed with the penalty of a FINE in the amount of Three Thousand (Php3,000.00) Pesos, with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.[18]

On August 30, 2019, Marin sent a letter[19] reiterating that she "genuinely regret[s] any error of judgment"[20] in assisting her friend's son. She apologized for the unintended lapse and sought this Court's consideration. She stressed that she has an untarnished record, and that working in this Court for the past three decades has been an integral part of her life.[21]

This Court resolves the sole issue of whether or not Chief Judicial Staff Officer Luningning R. Marin is guilty of conduct prejudicial to the best interest of the service.

This Court adopts the findings of the Office of Administrative Services, but resolves to decrease the imposed penalty.

Laws do not define or enumerate specific acts or omissions deemed prejudicial to the best interest of the service, but they are understood to be those that "violate the norm of public accountability and diminish — *or tend to diminish — the people's faith in the Judiciary*."[22] Conduct prejudicial to the best interest of the service constitutes one's acts that "tarnish the image and integrity of [their] public office."[23] It "need not be related or connected to the public officer's official functions."[24]

---

[18] Id. at 5-6.

[19] Id. at 41.

[20] Id. at 41.

[21] Id.

[22] *Marigomen v. Manabat, Jr.*, 676 Phil. 157, 165 (2011) [Per J. Brion, Second Division].

[23] *Pia v. Gervacio, Jr.*, 710 Phil. 196, 206 (2013) [Per J. Reyes, Jr., First Division].

[24] *Largo v. Court of Appeals*, 563 Phil. 293, 305 (2007) [Per J. Ynares-Santiago, En Banc].

As the Office of Administrative Services found, Marin's act was undoubtedly detrimental to the reputation of this Court and the entire Judiciary. She carelessly allowed Jamil and Alonzo's distribution of pamphlets advocating for a party in a case pending before this Court. She facilitated the easy access these strangers had to the justices' offices without going through the scrutiny of our security personnel.

Marin made it possible for Marcos to unduly influence this Court in its ruling. She knew that both her friend Soledad and her son Edgar worked for the office of Marcos, who has a pending case before this Court. She narrated that Edgar informed her that he was filing a document. She also recounted that when Jamil and Alonzo showed up, they introduced themselves as Edgar's co-workers. We cannot excuse her for simply not knowing the contents of the pamphlets they distributed.

Marin may have made an erroneous judgment as she claims to have been victimized by a friend, but the unauthorized distribution of the pamphlet championing Marcos's cause would not have happened if not for her gross negligence. We cannot brush aside her act, despite her claim that her kindness had been abused. This Court affirms the Office of Administrative Services' findings:

> [I]t was incredibly reckless and unthinkable for a court employee ranked as high as a SC Chief Judicial Staff Officer to fail to grasp that *any direct transaction with an office of a Justice of the Supreme Court, much less all of them, is not a matter to be taken lightly*. Yet, instead of being wary and cautious about the whole affair, she not only allowed such persons to gain access to the Court, but even left them to do as they please. In the same vein, although Ms. Marin may not be a member of the Bar, considering her rank and tenure in the Court, it is safe to presume that she ought to have known the established procedures to be followed in the Court. If she wanted to extend assistance to a party litigant with a case in the Court, she could have directed them to the proper office to receive assistance if they were so inclined to make a manifestation to the Court, or at the very least, endorsed them to the proper court staff or officer with the knowledge to properly advise them.[25] (Emphasis supplied)

[25] *Rollo*, p. 4.

Marin's gross negligence is not the behavior expected of court employees, more so of one who has been with this Court for more than three decades, and has held several supervisory positions. As the Office of Administrative Services underscored, Marin has had a long tenure in this Court. She started as a confidential stenographer in 1987, served in the Senate Electoral Tribunal in 1999, the Presidential Electoral Tribunal in 2003 and 2007, and since 2009, has held the supervisory rank of chief judicial staff officer in the Philippine Judicial Academy.[26]

Court employees must exercise their duties with the utmost care and responsibility. It is "the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice."[27] In *Consolacion v. Gambito*:[28]

> The Court stresses that the conduct of *every court personnel* must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.[29] (Emphasis supplied, citation omitted)

---

[26] Id. at 4. *See also rollo*, pp. 17-19, Marin's Service Record in this Court.

[27] *Marquez v. Clores-Ramos*, 391 Phil. 1, 11 (2000) [Per J. Kapunan, First Division] citing *Estreller v. Manatad*, 335 Phil. 1077 (1997) [Per J. Kapunan, First Division]; and *Sy v. Cruz*, 321 Phil. 236 (1995) [Per J. Regalado, Second Division].

[28] 690 Phil. 44 (2012) [Per Curiam, En Banc].

[29] Id. at 57.

This Court has repeatedly cautioned its employees to always act "with propriety and decorum, but above all else, must be above and beyond suspicion."[30] Marin failed to be circumspect in balancing her personal dealing with a friend and her commitment to protect this institution. Her failure to prudently act may impair this Court's image, cast doubt on the impartiality of the justices, and ultimately undermine the public's trust in the Judiciary.

Thus, for failing to meet the exacting standard imposed on her, Marin should be held accountable.

Under the 2017 Rules on Administrative Cases in the Civil Service, conduct prejudicial to the best interest of the service is a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year on the first offense and dismissal from service on the second.[31]

The 2017 Rules, however, grants the disciplining authority the discretion to consider mitigating circumstances in imposing the penalty.[32] In a recent case, this Court held:

> In several cases, this Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the employee's length of service, acknowledgment of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations, had varying significance in the determination of the imposable penalty.[33]

---

[30] *Ferrer v. Gapasin, Sr.*, 298 Phil. 572, 577 (1993) [Per Curiam, En Banc].

[31] 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, sec. 50 (B) (10).

[32] 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, sec. 53.

[33] *Re: Unauthorized Travel Abroad of Jonathan R. Geronimo, Utility Worker I, Regional Trial Court, Baguio City, Benguet, Branch 5*, A.M. No. P-20-4058, September 9, 2020, https://sc.judiciary.gov.ph/15017/ >3[Resolution, Third Division].

This Court notes that Marin acknowledged her mistake, expressed remorse, and asked this Court's indulgence for a second chance. This is her first offense in her three decades of service to the Judiciary. We employ some degree of leniency and impose the penalty of fine of ₱1,000.00. However, a repetition of similar acts shall be dealt with more severely.

WHEREFORE, Chief Judicial Staff Officer Luningning R. Marin of the Office of the Chancellor, Philippine Judicial Academy is found **GUILTY** of conduct prejudicial to the best interest of the service. She is ordered to pay a fine of ₱1,000.00, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, Lazaro-Javier, and *Delos Santos, JJ.*, on official leave.

EN BANC

[G.R. No. 198688. November 24, 2020]

KILUSANG MAGBUBUKID NG PILIPINAS (KMP), et al., *Petitioners, v.* **AURORA PACIFIC ECONOMIC ZONE AND FREEPORT AUTHORITY, represented by its board composed of: Roberto K. Mathay, President & CEO, et al.,** *Respondents*.

[G.R. No. 208282. November 24, 2020]

PINAG-ISANG LAKAS NG MGA SAMAHAN SA CASIGURAN, AURORA (PIGLASCA), represented by its Vice President Edwin C. Garcia, et al., *Petitioners, v*. **AURORA PACIFIC ECONOMIC ZONE AND FREEPORT AUTHORITY (APECO), SENATE OF THE PHILIPPINES, represented by Senate President Franklin Drilon, and HOUSE OF REPRESENTATIVES, represented by Speaker Feliciano Belmonte,** *Respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; TRADITIONAL AND EXPANDED POWER OF JUDICIAL REVIEW, DISTINGUISHED.— This Court's power of judicial review springs from Article VIII, Section 1 of the Constitution:

. . .

This provision articulates the courts' traditional and expanded powers of judicial review. Prior to the 1987 Constitution, judicial review is confined to its traditional ambit of settling actual controversies involving legally demandable and enforceable rights.

Under the present Constitution, the expanded power of judicial review includes the "power to enforce rights conferred by law

and determine grave abuse of discretion by any government branch or instrumentality." Its scope was deliberately enlarged to "prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government."

2. ID.; ID.; ID.; ID.; REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; PETITIONS FOR CERTIORARI UNDER THE TRADITIONAL AND EXPANDED MODE, DISTINGUISHED.— The broad grant of power under the expanded view contrasts with the remedy of certiorari under Rule 65 of the Rules of Court. . . .

. . .

However, this ad hoc approach requires a careful distinction between petitions under the expanded jurisdiction and those under Rule 65:

> The two situations differ in the type of questions raised. The first is the constitutional situation where the constitutionality of acts are questioned. The second is the non-constitutional situation where acts amounting to grave abuse of discretion are challenged without raising constitutional questions or violations.
>
> The process of questioning the constitutionality of a governmental action provides a notable area of comparison between the use of certiorari in the traditional and the expanded modes.
>
> Under the traditional mode, plaintiffs question the constitutionality of a governmental action through the cases they file before the lower courts; the defendants may likewise do so when they interpose the defense of unconstitutionality of the law under which they are being sued. A petition for declaratory relief may also be used to question the constitutionality or application of a legislative (or quasi-legislative) act before the court.
>
> For quasi-judicial actions, on the other hand, certiorari is an available remedy, as acts or exercise of functions that violate the Constitution are necessarily committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution. Under both

remedies, the petitioners should comply with the traditional requirements of judicial review, discussed below. In both cases, the decisions of these courts reach the Court through an appeal by certiorari under Rule 45.

In contrast, existing Court rulings in the exercise of its expanded jurisdiction have allowed the direct filing of petitions for certiorari and prohibition with the Court to question, for grave abuse of discretion, actions or the exercise of a function that violate the Constitution. *The governmental action may be questioned regardless of whether it is quasi-judicial, quasi-legislative, or administrative in nature. The Court's expanded jurisdiction does not do away with the actual case or controversy requirement for presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a prima facie showing of grave abuse of discretion in the exercise of the governmental act.*

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE SUPREME COURT MAY REVIEW PETITIONS FOR *CERTIORARI* ASSAILING THE CONSTITUTIONALITY OF A LEGISLATIVE ACT.— Such distinction, however, does not preclude this Court from resolving Rule 65 petitions involving government branches or instrumentalities that do not exercise judicial, quasi-judicial, or ministerial functions. In *Araullo v. Aquino III*:

. . .

Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Hence, this Court may review Rule 65 petitions, as in these present cases, assailing a legislative act.

4. ID.; ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; THE OBSERVANCE OF THE RULE ON HIERARCHY OF COURTS IS A CONSTITUTIONAL IMPERATIVE.— This Court shares concurrent jurisdiction with lower courts over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*. Under the rule on hierarchy of courts, a petition must first be brought before the lowest court with jurisdiction and then appealed before it reaches this Court. This

concurrent jurisdiction does not give the party discretion on where to file their petition.

This Court is a court of last resort. To directly invoke its original jurisdiction, there must be convincing and significant reasons set out in the petition, along with compliance with our rules on justiciability.

Observing the rule on hierarchy of courts is a constitutional imperative arising from two important considerations, as held in *Gios-Samar, Inc. v. Department of Transportation and Communications*: first, our judicial structure; and second, the requirements of due process.

The hierarchy of courts is borne out of the establishment of various levels of courts under the Constitution and our procedural laws. This includes how courts interact with respect to each other's rulings, as well as the determination of proper forum for appeals and petitions.

5. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; FACTUAL QUESTIONS; PETITIONS RAISING QUESTIONS OF FACT CANNOT BE DIRECTLY FILED BEFORE THE SUPREME COURT.— Under our procedural rules, trial and appellate courts can resolve both questions of law and fact, while this Court is generally only authorized to settle questions of law. It is not a trier of facts. Whether in the exercise of its original or appellate jurisdiction, this Court is not equipped to receive and weigh evidence at the first instance because its main role is to apply the law based on established facts.

The initial reception and appreciation of evidence is a function given to lower courts. . . .

When petitions are directly filed before this Court, the judicial structure is bypassed and there is a risk that the facts alleged are incomplete and disputed. As a result, this Court may not be equipped to resolve the case.

6. ID.; ID.; ID.; ID.; ID.; RIGHT TO DUE PROCESS; THE RIGHT TO DUE PROCESS IS UNDERMINED BY DIRECTLY FILING A CASE BEFORE THE SUPREME COURT. — Adherence to the rule on judicial hierarchy is also hinged on due process. By going through the judicial structure,

litigants are given the opportunity to present and establish their evidence before the trial court. Conversely, by directly filing before this Court, litigants undermine their right to due process by depriving themselves of the "opportunity to completely pursue or defend their causes of actions."

7. ID.; ID.; ID.; ID.; ID.; THE DOCTRINE OF HIERARCHY OF COURTS IS A MECHANISM TO FILTER CASES WHICH REACH THE SUPREME COURT.— [T]he doctrine is a filtering mechanism. It averts inordinate demands on this Court's attention, time, and resources, which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of its docket.

This Court cannot be burdened with the functions of the lower courts. By mandate, it must not be so engrossed with cases limited to transient rights and obligations of individuals, as it is called on to settle matters involving "national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights." With the hierarchy of courts, this Court can direct its attention to such cases that allow it to perform more fundamental tasks assigned by the Constitution.

8. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS TO THE DOCTRINE OF HIERARCHY OF COURTS; TO INVOKE ANY OF THE EXCEPTIONS, THE PETITIONER MUST RAISE PURELY QUESTIONS OF LAW.— [T]he doctrine is not an ironclad rule. Exceptions may be admitted if the ends of justice are defeated by a rigid adherence to the rules of procedures and technicalities. This Court has full discretion to take cognizance of special civil actions for certiorari filed directly before it if there are compelling reasons.

In *The Diocese of Bacolod*, we provided exceptions to the doctrine of hierarchy of courts accepted by this Court, . . .

However, to invoke any of these exceptions, petitioners must purely raise questions of law. The decisive factor is not the invocation of special and important reasons, but the nature of the question raised in the petition.

. . .

Without clear and specific allegations of facts, this Court cannot rule on the rights and obligations of the parties. Invoking an exception to the hierarchy of courts does not do away with a petition's infirmities. This is more apparent in petitions which require resolutions of factual issues that are indispensable for cases' proper disposition.

9. ID.; ID.; ID.; ID.; REQUISITES OF JUSTICIABILITY; ACTUAL CASE OR CONTROVERSY; THE EXISTING CONFLICT OF LEGAL RIGHTS MUST HAVE SUFFICIENT CONCRETENESS OR ADVERSARINESS TO ASCERTAIN WHETHER THE CONSTITUTION WAS INDEED VIOLATED.— A case is justiciable if the following are present: "(1) an actual case or controversy over legal rights which require the exercise of judicial power; (2) standing or locus standi to bring up the constitutional issue; (3) the constitutionality was raised at the earliest opportunity; and (4) the constitutionality is essential to the disposition of the case or its *lis mota*."

An actual case or controversy exists when there is "a conflict of legal right, an opposite legal claims susceptible of judicial resolution." . . .

. . .

To have a justiciable case, a conflict of rights must have "sufficient concreteness or adversariness." A real conflict must exist based on specific facts to ascertain whether the Constitution was indeed violated. Without an actual case, this Court's decisions are reduced to academic exercises with no genuine resolutions for the parties, and a case is not ripe for judicial determination. . . .

When a case ceases to present an actual case, courts generally decline jurisdiction because a resolution would be of no practical use or value. This Court will only pass upon the constitutionality of a statute "only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."

10. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING; THE PARTIES MUST SHOW PERSONAL AND SUBSTANTIAL INTEREST IN THE CASE SUCH THAT THEY HAVE SUSTAINED OR WILL SUSTAIN DIRECT INJURY AS

A RESULT OF THE CHALLENGED GOVERNMENTAL ACT.— The second requisite of legal standing, or *locus standi*, is defined as "a right of appearance in a court of justice on a given question." . . .

To possess *locus standi*, a party must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." "Interest" in this context means material interest, and not mere incidental interest.

. . .

A direct injury is required to be shown to guarantee that the filing party has a "personal stake in the outcome of the controversy and, in effect, assures 'that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.'" Thus, the person praying for a judicial remedy must show "a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic."

11. ID.; ID.; ID.; ID.; PETITIONS THAT DO NOT PURELY RAISE QUESTIONS OF LAW, BUT ARE INEXTRICABLY INTERTWINED WITH UNDERLYING QUESTIONS OF FACT, WILL NOT BE RESOLVED BY THE COURT NOTWITHSTANDING THE PARTY'S INVOCATION OF TRANSCENDENTAL IMPORTANCE.— While the Petitions claim that the laws violate several constitutional provisions, showing an actual case is indispensable. Transcendental importance is not an exception to justiciability.

Here, the Petitions do not purely raise questions of law. There were allegations of facts which are disputed, such as the lack of prior consultation, the displacement and deprivation of the residents' incomes, and which specific parcels of land were referred to in the ·Petitions. It is also unclear which lands are irrigated and irrigable. The sworn statements from affected residents likewise do not allege actual displacement and conversion, but merely the fear of possible, not actual, loss of livelihood and housing.

. . .

While petitioners raised questions ·of law, these are inextricably intertwined with underlying questions of fact. There is a need to thresh out factual issues which this Court cannot address at this stage.

12. ID.; ID.; ID.; ID.; FACIAL REVIEW OF A STATUTE; TO ALLOW A FACIAL REVIEW OF STATUTE, THE FACTS CONSTITUTING THE VIOLATION OF CONSTITUTIONAL RIGHTS MUST BE COMPLETE, UNDISPUTED, AND ESTABLISHED BEFORE A LOWER COURT.— There are narrow instances when this Court may review a statute on its face despite the lack of an actual case. A facial review is allowed in cases of patently imminent violation of fundamental rights. The violation must be so demonstrably blatant that it overrides the policy of constitutional deference. However, the facts constituting the violation must be complete, undisputed, and established in a lower court.

Petitioners should have first gone to our trial courts, which are equipped to receive and assess evidence, and may later appeal before the appellate court, so that facts would be synthesized and conflicting claims resolved. By filing their Petitions immediately before this Court, petitioners missed the opportunity to have complete and clear factual submissions.

Without first resolving the factual disputes, it is not clear whether there was a direct, material, and substantial injury to petitioners. There is no factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations.

13. LABOR AND SOCIAL LEGISLATIONS; COMPREHENSIVE AGRARIAN REFORM LAW (REPUBLIC ACT NO. 6657); AGRICULTURAL LAND CONVERSION OR RECLASSIFICATION; CONVERSION DISTINGUISHED FROM RECLASSIFICATION.— [U]nder Section 65 of the Comprehensive Agrarian Reform Law, conversion or reclassification may be allowed "when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes[.]"

Conversion is the "act of changing the current use of a piece of agricultural land into some other use[.]" On the other hand, reclassification is the "act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion." Although reclassification is indicative of which agricultural areas can be converted to non-agricultural uses, it does not involve an actual change in land use.

Conversion is strictly regulated and may be allowed only upon compliance with the conditions under the Comprehensive Agrarian Reform Law. Mere reclassification does not automatically allow a landowner to change its use. Conversion must be approved before a landowner is permitted to use the agricultural land for other purposes.

14. ID.; ID.; ID.; THE RECLASSIFICATION AND CONVERSION OF AGRICULTURAL LANDS INTO NON-AGRICULTURAL USES MUST BE APPROVED BY THE DEPARTMENT OF AGRARIAN REFORM WHETHER OR NOT THE LANDS HAVE BEEN AWARDED TO THE FARMER-BENEFICIARIES.— The Department of Agrarian Reform's approval of the conversion of agricultural land into an industrial estate, or any other use, is a condition precedent before developing the land for industrial use. Conversely, the lack of approval for the conversion means that the farmland was never placed beyond the scope of the Comprehensive Agrarian Reform Program.

Ros v. Department of Agrarian Reform ruled that after the passage of the Comprehensive Agrarian Reform Law, lands sought to be reclassified have to go through conversion, over which the Department of Agrarian Reform has jurisdiction. Hence, even if the local government has approved the reclassification, the Department must ·still confirm it:

. . .

Thus, respondents' argument that the Department of Agrarian Reform's approval is not required because the lands are not yet awarded must fail. To reiterate *Roz*, whether or not the land has been awarded to farmer-beneficiaries, the Department must approve the conversion.

15. ID.; ID.; ID.; EXECUTIVE ORDER NO. 448; PARCELS OF LAND MAY BE DECLARED ALIENABLE AND DISPOSABLE BY THE PRESIDENT NOT ONLY THROUGH A PRESIDENTIAL PROCLAMATION, BUT ALSO THROUGH AN EXECUTIVE ORDER.— [R]espondents are mistaken to argue that part of the 110-hectare reservation initially devoted for educational purposes cannot be declared part of the Comprehensive Agrarian Reform Program because there is no presidential proclamation declaring the land alienable and disposable. The president may very well declare parcels of land alienable and disposable through an executive order, such as Executive Order No. 448.

Under Section 6 of Commonwealth Act No. 141, the prerogative to classify and reclassify land to alienable and disposable land is granted to the president, who can declare so in a presidential proclamation or an executive order. . . .

Under Section 1-A of Executive Order No. 407, as amended by Executive Order No. 448, part of the 110-hectare reservation which is "no longer actually, directly and exclusively used or necessary for the purposes for which they have been reserved ... shall be segregated from the reservation and transferred to the Department of Agrarian Reform" for distribution under the Comprehensive Agrarian Reform Program.

16. ID.; ID.; ID.; THE AGRICULTURAL LANDS WHICH ARE ACTUALLY CONVERTED FOR NON-AGRICULTURAL USES MUST BE SPECIFIED.— [T]o require conversion and reclassification, it must be clearly shown which specific parcels of agricultural land are actually used for non-agricultural purpose. The laws creating APECO did not simultaneously transform the covered area for industrial use. There must be specific allegations clearly showing which agricultural lands were actually converted for other use or for what purpose they are now used.

. . .

However, as pointed out, it is not clearly shown which parcels of agricultural land within this reservation were actually converted for other use. The same goes for petitioners' contention on irrigated and irrigable lands. Under the rules and regulations on the conversion of agricultural lands, irrigated and irrigable lands cannot be subjected to conversion, but it is uncertain which

of these lands were converted for other use. In fact, there is no allegation as to what non-agricultural purpose the lands are now used for.

17. POLITICAL LAW; CONSTITUTIONAL LAW; POWER OF EMINENT DOMAIN; ECONOMIC ZONE AUTHORITIES ARE GRANTED THE POWER TO EXERCISE EMINENT DOMAIN.— Economic zone authorities are granted the power to exercise eminent domain. Owners of properties that were taken for public use are entitled to just compensation. Without payment of just compensation, the government violates one's property right. When there is no expropriation proceeding, the private owner may compel the payment of the property taken.

18. ID.; ID.; ID.; THE ELEMENTS OF TAKING OF PRIVATE PROPERTY FOR EXPROPRIATION MUST BE CLEARLY SHOWN.— The elements of taking of private property are laid down in *Republic v. Vda. de Castellvi*, namely: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry should be by legal authority; (4) the property must be devoted to a public use, or otherwise informally appropriated or injuriously affected; and (5) the property's utilization for public use must oust the owner and deprive them of all beneficial enjoyment of the property.

None of the elements are present here. Petitioners failed to allege if and how respondent APEZA entered into the agricultural lands and ancestral lands. The statements from petitioner-residents simply voiced out fears of the economic zone's establishment, but none of them claimed that their lands were actually taken and occupied by respondent APEZA.

This Court cannot do guesswork to advocate for a party. There were no allegations that petitioners' properties were devoted to a public use, that the properties were injuriously affected, or that petitioners were deprived of the beneficial use of their lands. Whether the properties were impaired, or whether petitioners were prevented from using the properties as they intended—all these remain unclear.

19. ID.; ID.; NATIONAL ECONOMY AND PATRIMONY; MARINE AND FISHING RESOURCES; THE PREFERENTIAL RIGHT OF SUBSISTENCE

FISHERFOLK TO USE MARINE RESOURCES IS NOT ABSOLUTE, BUT REMAINS UNDER THE STATE'S FULL CONTROL AND SUPERVISION.— Article XII, Section 2 and Article XIII, Section 7 of the Constitution state the policy of protecting the nation's marine wealth and the rights of subsistence and marginal fisherfolk.

. . .

On the other hand, Article XIII, Section 7 refers to the "use of communal marine and fishing resources" and "their protection, development and conservation." *Tano* clarified that the "preferential right" of subsistence fisherfolk to use marine resources is not absolute, as the exploration, development, and use of marine resources are under the State's full control and supervision. Thus, the State may prescribe certain restrictions on the rights of subsistence fisherfolk as to their use and enjoyment of the marine resources.

20. ID.; ID.; ID.; ALLOWING FOREIGN INVESTORS TO OPERATE PUBLIC UTILITIES AND INFRASTRUCTURE IN THE ECONOMIC ZONE IS NOT VIOLATIVE OF THE FISHERFOLKS' PREFERENTIAL RIGHT TO USE THE COMMUNAL MARINE AND FISHING RESOURCES,— Nothing in Section 12(n) of Republic Act No. 9490, as amended, violates the exclusive use and exploitation of marine resources by allowing foreign intrusion. . . .

. . .

Section 12(n) merely allows private investors to establish, operate, and maintain public utilities, services, and infrastructure in the economic zone. Petitioners failed to show that foreign investors were allowed to exploit the fishery and aquatic resources. Likewise, Section 12(n) does not violate the fisherfolk's right to the preferential use of the communal marine and fishing resources.

Similarly, neither Petition claimed that a free port was actually constructed along the shores of Casiguran to the prejudice of the fisherfolk. Petitioners did not identify instances when they were prevented from working in the fishing grounds. As such, this issue cannot properly be resolved.

21. ID.; ADMINISTRATIVE LAW; AURORA SPECIAL ECONOMIC ZONE ACT OF 2007 (REPUBLIC ACT NO. 9490), AS AMENDED BY REPUBLIC ACT NO. 10083; INDIGENOUS PEOPLES' RIGHTS ACT OF 1997 (REPUBLIC ACT NO. 8371); TO ENABLE THE COURT TO RULE ON THE ALLEGED VIOLATIONS OF THE RIGHTS OF THE INDIGENOUS PEOPLES, THEIR FEAR OF DISPLACEMENT FROM THEIR ANCESTRAL LANDS AND VIOLATION OF THEIR RIGHTS BY THE ESTABLISHMENT OF THE AURORA PACIFIC ECONOMIC ZONE AND FREEPORT (APECO) MUST HAVE FACTUAL BASIS. — Flowing from their right of ownership, indigenous peoples likewise have the right to stay in the territories. Under the law, they will not be "relocated without their *free and prior informed consent*, nor through any means other than eminent domain."

. . . As part of this self-governance, they have the right to participate in decision-making on matters that affect them, and the right to determine their priorities for development.

Here, however, petitioners merely speculated that APECO would displace the Agtas and Dumagat communities [from] their ancestral lands. There was also no showing how their right to participate in decision-making was sidestepped. Again, without established factual basis, this Court cannot rule on the alleged violations.

22. ID.; ID.; ID.; LOCAL GOVERNMENT; LOCAL AUTONOMY; THE ABSENCE OF PRIOR CONSULTATION REGARDING THE ESTABLISHMENT OF AN AUTONOMOUS SPECIAL ECONOMIC ZONE DOES NOT INVALIDATE THE LAW CREATING IT.— The intergovernmental relation between the national and local government means that "[n]ational agencies and offices with project implementation functions shall coordinate . . . with the local government units" and "shall ensure the participation of local government units both in the planning and implementation of said national projects." Section 117 of the Local Government Code requires the concurrence of the local government units to the establishment of autonomous special economic zones.

Nevertheless, the requirement of prior consultations, or the lack of it, will not affect the validity of the law itself, but only

its implementation. As worded in the Local Government Code, "[n]o project or program shall be implemented . . . unless the consultations mentioned in Section 2(c) and 26 . . . are complied with, and prior approval of the sanggunian concerned is obtained." Thus, these deficiencies will not invalidate the laws.

23. ID.; ID.; ID.; ID.; POWER OF LOCAL GOVERNMENT UNITS; THE CREATION OF APECO DOES NOT REQUIRE A PLEBISCITE, AS IT IS NOT A POLITICAL UNIT. — [T]here is no legal basis for the claim that an economic zone is a political unit.

The Constitution and the Local Government Code expressly require a plebiscite to carry out any creation, division, merger, abolition or alteration of boundaries of a local government unit. The "commencement, the termination, and the modification of local government units' corporate existence and territorial coverage" would impact the local government's exercise of its functions, resulting in material changes in the "political and economic rights of the local government units directly affected as well as the people therein." For this reason, getting the consent of the affected people is required. . . .

. . .

APECO neither abolished nor altered the boundaries of Casiguran. The concern in the abolition or alteration of boundaries is the modification of the local government's corporate existence and territorial coverage. When APECO was established, the boundaries of Casiguran remained the same, because APECO is not a territorial and political subdivision. It did not alter the political and economic rights of the local governments concerned.

Notably, APECO is not involved in the administration of the local affairs. Compared to a local government unit, it does not possess the power to legislate. Its board is not composed of officials elected by the people. It does not have a taxing authority to generate resources for a certain locality. It does not deliver basic services to its constituents. Thus, APECO's creation does not require a plebiscite.

24. ID.; ID.; ID.; ID.; ID.; LOCAL TAXATION; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; THE PREFERENTIAL TAX TREATMENT OF

BUSINESSES WITHIN THE ECONOMIC ZONE IS A VALID CLASSIFICATION AND NOT VIOLATIVE OF THE LOCAL GOVERNMENT'S AUTHORITY TO TAX. — As to the issue of local taxation, we likewise reject petitioners' claim.

In *Tiu v. Court of Appeals*, the validity of preferential tax treatment within areas covered by a special economic zone was upheld. . . .

In upholding the validity of the executive order, this Court found no violation of the equal protection clause because there are "real and substantive distinctions between the circumstances obtaining inside and those outside the Subic Naval Base, thereby justifying a valid and reasonable classification." This Court determined that the intent in creating the economic zone was to attract and encourage investors, and to that end, Congress deemed it necessary to apply preferential tax treatment within the economic zone.

. . .

Hence, the preferential tax treatment within economic zones is a valid classification. It does not violate the local government's authority to tax.

25. ID.; ID.; ID.; CONSTITUTIONAL LAW; THE STATE'S POLICE POWER; NON-IMPAIRMENT CLAUSE; THE FREEDOM TO CONTRACT IS NOT ABSOLUTE, BUT MAY BE RESTRICTED BY THE STATE'S POLICE POWER.— The non-impairment clause of the Constitution provides that "[n]o law impairing the obligation of contracts shall be passed." This clause aims to protect the "integrity of contracts against unwarranted interference by the State."

Impairment refers to "anything that diminishes the efficacy of the contract." Thus, subsequent laws cannot tamper existing contracts by changing or modifying the parties' rights and obligations. The non-impairment clause's application is limited "to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties."

However, the freedom to contract is not absolute. There are instances when the non-impairment clause must yield to the State's police power. . . .

The non-impairment of contracts may be restricted by police power "in the interest of public health, safety, morals, and general welfare of the community" as well as to afford protection to labor.

26. ID.; ID.; ID.; ID.; ID.; THE STATE'S CREATION OF APECO UNDER ITS POLICE POWER IS SUPERIOR TO THE STEWARDSHIP CONTRACTS AWARDED TO FARMER–BENEFICIARIES UNDER EXECUTIVE ORDER NO. 263. — [P]etitioners claim that the creation of APECO violates their stewardship agreements with the government because it modifies the terms of these agreements.

Executive Order No. 263, series of 1995, adopted the community-based forest management. It recognizes the "indispensable role of local communities in forest protection, rehabilitation, development and management, and targets the protection, rehabilitation, management, and utilization of . . . forestlands, through the community-based forest management strategy[.]" Through the program, certificates of stewardship contracts are awarded to individuals or families actually occupying or tilling portions of forest lands. Community-based forest management agreements are entered into with people's organizations, where the community enjoys the "benefits of sustainable utilization, management and conservation of forestlands and natural resources therein."

The State's exercise of police power is superior to the non-impairment of contracts. Here, the establishment of APECO is in line with its policy of spurring industrial, economic, and social development along the rural areas in the country. Notably, the reservation of the State's exercise of police power is clearly provided in the Executive Order. In instances that the contracts must be pre-terminated, grantees are entitled to compensation.

In any case, none of the petitioners who claimed to be awardees of stewardship agreements showed how their contracts were undermined by the establishment of APECO. To support their conclusion that these agreements were violated, there must be proof that they were displaced or prevented from tilling the forest lands. None was present here.

27. ID.; ID.; ID.; ID.; EXECUTIVE DEPARTMENT; POWERS OF THE PRESIDENT; CONTRACTING FOREIGN

LOANS FOR APECO REQUIRES THE APPROVAL OF THE PRESIDENT AND THE MONETARY BOARD, AND A RECOMMENDATION FROM THE DEPARTMENT OF FINANCE.— The allegations on the violation on rules concerning foreign loans and foreign investment are likewise untenable.

The president is allowed to contract and guarantee foreign loans, and the Constitution does not distinguish as to the kind of loans or debt instruments that it covers. The president shares this authority with the Central Bank. Article XII, Section 20 of the Constitution, which amends its counterpart in the 1973 Constitution, now provides that majority of the members of the Monetary Board shall come from the private sector to maintain its independence.

. . .

Section 12(g) of Republic Act No. 9490 complies with the constitutional and legal requirements on contracting foreign loans. . . .

It is clear that the [contracting] of foreign loan for APECO is subject to the approval of the president and the Monetary Board, and upon the Department of Finance's recommendation. This provision cannot be interpreted to mean that respondent APEZA can, on its own, contract foreign loans and other indebtedness. The safeguards found in the Constitution and the Special Economic Zone Act are present in the provision.

Reading the constitutional provisions, Congress has no part in contracting the foreign loan except to limit and regulate how the loans may be contracted. It cannot expand the constitutional provision and determine who may exercise this power. Hence, APECO cannot contract foreign loans on its own. Whatever financial indebtedness it incurs is the government's.

APPEARANCES OF COUNSEL

Public Interest Law Center for petitioners in G.R. No. 198688.
Office of the Government Corporate Counsel for respondent APECO.
Ateneo Human Rights Center for petitioner in G.R. No. 208282.

D E C I S I O N

LEONEN, *J.*:

This Court is not a trier of facts. Whether in its original or appellate jurisdiction, this Court is not equipped to receive and weigh evidence in the first instance. When litigants bypass the hierarchy of courts, the facts they claim before this Court are incomplete and disputed.

Bypassing the judicial hierarchy requires more than just raising issues of transcendental importance. Without first resolving the factual disputes, it will remain unclear if there was a direct injury, or if there was factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations. Transcendental importance is no excuse for not meeting the demands of justiciability.

Before this Court are two consolidated Petitions for Certiorari and Prohibition[1] with an application for temporary restraining order. Both Petitions[2] assail as unconstitutional Republic Act No. 9490,[3] as amended by Republic Act No. 10083,[4] which established the Aurora Special Economic Zone and Freeport, a special economic zone and freeport in Aurora.

Petitioners are members of the Agta and Dumagat indigenous communities, farmer-beneficiaries, fisherfolk, and residents of the affected barangays in Casiguran, Aurora, as well as concerned sectoral organizations.[5] Named as respondents in both Petitions are the Aurora Pacific Economic Zone and Freeport Authority (APEZA), as represented by its Board of Directors, the House

---

[1] Both Petitions were filed under Rule 65 of the Rules of Court.

[2] *Rollo* (G.R. No. 198688), pp. 3-157 and *rollo* (G.R. No. 208282), pp. 3-91.

[3] Aurora Special Economic Zone Act of 2007.

[4] Aurora Pacific Economic Zone and Freeport Act of 2010.

[5] *Rollo* (G.R. No. 198688), pp. 11-15 and *rollo* (G.R. No. 208282), pp. 4-7.

of Representatives, as represented by the House Speaker, and the Senate, as represented by the Senate President.[6]

Republic Act No. 9490, or the Aurora Special Economic Zone Act of 2007,[7] established a special economic zone in Aurora, known as the Aurora Special Economic Zone (Aurora Ecozone).[8] It aims to promote tourism and encourage investments within the province.[9] The proposed Aurora Ecozone would comprise a 500-hectare land area, covering Barangays Esteves, Dibet, and Dibacong in Casiguran, Aurora.[10]

The municipality of Casiguran is home to 250 Agta and Dumagat families.[11] Majority of its population are farmers, fisherfolk, and indigenous peoples whose sources of livelihood are farming and fishing.[12]

According to petitioners, the residents of Barangays Esteves, Dibet, and Dibacong were neither informed nor consulted before Republic Act No. 9490 was passed.[13] They opposed the law's passage by signing petitions[14] and seeking the help of Casiguran Mayor Reynaldo T. Bitong.[15]

---

[6] *Rollo* (G.R. No. 198688), p. 5 and *rollo* (G.R. No. 208282), pp. 7-8.

[7] *Rollo* (G.R. No. 208282), p. 15.

[8] *Rollo* (G.R. No. 198688), p. 17.

[9] Id. at 936.

[10] Id. at 17.

[11] *Rollo* (G.R. No. 208282), p. 52.

[12] *Rollo* (G.R. No. 198688), p. 16.

[13] Id. at 18-20.

[14] Id. at 19, citing "Paninindigan ng mga magsasaka/Nagmamay-ari ng lupa," which was signed by 164 farmers, stating that their lands are titled and irrigated land and that they were not consulted, among others and "Isang kahilingan sa mga kinauukulan ng mga mamamayan, mga magsasaka, mga mangingisda, agrarian reform beneficiaries, at mga man[g]gagawang bukid ng Brgy[.] Dibet, Brgy. Esteves at Brgy. Bianoan, Casiguran, Aurora."

[15] Id. at 20-23.

In 2009, the Municipal Council of Casiguran, through Resolution No. 001-2009,[16] requested House Representative Juan Edgardo Angara (Representative Angara), the law's principal author, to clarify technical matters on the law's enactment and implementation.[17] It also passed Resolution No. 002-2009,[18] seeking information from the Chair of the APEZA on the status of legitimate landowners, agrarian reform beneficiaries, and tenants within the proposed Aurora Ecozone.[19]

Neither Representative Angara nor the Chair of the APEZA replied.[20]

In the meantime, Congress passed Republic Act No. 10083 in 2010, amending Republic Act No. 9490 to further widen the covered areas of the Aurora Ecozone.[21] Republic Act No. 10083, or the Aurora Pacific Economic Zone and Freeport Act of 2010, renamed the economic zone to Aurora Pacific Economic Zone and Freeport (APECO),[22] with its total land area increased from 500 hectares to 12,923 hectares.

APECO was divided into two parcels of land covering areas of Casiguran. Parcel 1 covers Barangays Dibet and Esteves, while Parcel 2 covers Barangays San Ildefonso, Cozo, and Culat.[23] In addition, a freeport was to be established within the economic zone.[24] APEZA, which stood for the Aurora Special Economic

---

[16] Id. at 207-208.

[17] Id. at 23.

[18] Id. at 209-210.

[19] Id. at 23.

[20] Id.

[21] *Rollo* (G.R. No. 208282), p. 16.

[22] Republic Act No. 10083 (2010), sec. 12 provides:

Section 12. All provisions in Republic Act No. 9490 pertaining to the Aurora Special Economic Zone shall be amended to refer to the APECO.

[23] *Rollo* (G.R. No. 198688), p. 24.

[24] Id. at 937, Comment.

Zone Authority, was also renamed as the Aurora Pacific Economic and Freeport Zone Authority.[25]

Among those covered by Parcel 1 is a 110-hectare area originally designated as a school reservation area,[26] but of which only five hectares had been occupied.[27] Thus, since the 1960s, agricultural settlers have been occupying and tilling the unused portion[28] of this largely rice land.[29] At present, around 55 farmers till 90 hectares of the rice land,[30] some of them with pending petitions[31] seeking to be covered under the Comprehensive Agrarian Reform Program.[32] Other farmers have Certificates of Land Ownership Award (CLOAs) registered in their names.[33]

Parcel 2 includes 12,427 hectares of land situated in Barangays San Ildefonso, Cozo, and Culat.[34]

Petitioners allege that around 873 indigenous peoples composed of Agta and Dumagat people in the municipalities of Dinalungan, Casiguran, and Dilasag have already applied for certificates of ancestral domain titles (CADTs) over lands that cover around 91,000 hectares. Of this area, APECO would cover around 11,900 hectares.[35]

---

[25] Id. at 23.

[26] *Rollo* (G.R. No. 208282), p. 136.

[27] *Rollo* (G.R. No. 198688) p. 27. The 110-hectare parcel of land was declared as a reservation by then Governor General Frank Murphy by virtue of Proclamation No. 723 dated August 21, 1934; *rollo* (G.R. No. 208282), p. 136. The area was occupied by the Aurora (Calabagan) National Fisheries School, later renamed Casiguran National High School. When the Aurora State College of Technology was created, it absorbed Casiguran National High School and all its resources, including the reservation.

[28] *Rollo* (G.R. No. 208282), p. 136.

[29] Id. at 21.

[30] *Rollo* (G.R. No. 198688), p. 28.

[31] *Rollo* (G.R. No. 208282), p. 22.

[32] Id. at 28.

[33] *Rollo* (G.R. No. 198688), pp. 36-38.

[34] Id. at 29.

[35] Id.

APECO is adjoined by a 57.4-kilometer stretch of shoreline for saltwater fishing from the southern tip of the peninsula of Barangay San Ildefonso to the opposite shore of Casiguran Sound.[36]

Affected local government units in Casiguran passed resolutions questioning the enactment of Republic Act No. 9490, as amended.[37] Meanwhile, residents of Barangay Cozo signed a petition[38] against APECO.[39]

On October 13, 2011, the Kilusang Magbubukid ng Pilipinas, concerned sectoral organizations and affected residents of Casiguran (KMP, et al.) directly filed before this Court a Petition for Certiorari and Prohibition with an application for a temporary restraining order. The Petition was docketed as G.R. No. 198688.[40]

Respondent APEZA[41] and public respondents, the House of Representatives and the Senate,[42] filed their respective Comments on the Petition. Petitioners KMP, et al. filed their Consolidated Reply.[43]

Meanwhile, from November 26, 2012 to December 10, 2012, at least 120 farmers, fisherfolk, and members of the Agta indigenous community walked on foot from Casiguran to Manila protesting the implementation of the Aurora Economic Zone and Freeport Act. This led to a dialogue with then President Benigno Aquino III, who tasked the Department of Justice to

---

[36] Id. at 29.

[37] Id. at 25-26.

[38] Id. at 574-582.

[39] Id. at 26.

[40] Id. at 3-157. The Petition was filed under Rule 65 of the Rules of Court.

[41] Id. at 827-905.

[42] Id. at 934-988.

[43] Id. at 1110-1188.

review the legal implications of APECO, and the National Economic and Development Authority to review APECO's economic viability.[44]

In 2013, the Department of Agrarian Reform conducted a validation on activities in APECO and found that no clearance was secured from the DAR-Aurora for the sale and transfer of the land to APECO and that the landholdings are irrigated rice land. Moreover, it found that the properties were converted from agricultural to residential use for the NHA-APECO Nayon Kalikasan Housing Project.[45] Subsequently, a Complaint for Illegal Conversion,[46] and the Department of Agrarian Reform ordered APECO to desist from further altering or changing the use of the land within the economic zone.[47]

As required by this Court,[48] which had given due course to the Petition in G.R. No. 198688, the parties submitted their respective memoranda.

Subsequently, the National Economic and Development Authority assessed that APECO is operating without a comprehensive master plan. Moreover, the local government units' activities in the catchment areas do not complement the plans of APECO.[49]

The Department of Justice also opined[50] that, pursuant to Executive Order No. 407, the parcels of land suitable for agriculture must be transferred to the Department of Agrarian Reform for distribution under the Comprehensive Agrarian

---

[44] *Rollo* (G.R. No. 208282), p. 24.

[45] Id. at 27-29.

[46] Id. at 28.

[47] Tonette Orejas, *DAR stops Apeco housing project*, INQUIRER, November 5, 2015, <https://newsinfo.inquirer.net/736995/dar-stops-apeco-housing-project> (last accessed November 24, 2020).

[48] *Rollo* (G.R. No. 198688), pp. 1694-1695.

[49] Id. at 31.

[50] *Rollo*, (G.R. No. 208282), pp. 147-160, DOJ Opinion 35, Series of 2013.

Reform Program.[51] Moreover, under Executive Order No. 448, all government reservations suitable for agriculture and no longer needed for a reservation are included in the areas that must be transferred for agrarian reform.[52]

On August 12, 2013, Pinag-isang Lakas ng mga Samahan ng Casiguran, other Casiguran residents composed of farmers and fishertolk, and members of the Agta indigenous cultural community (PIGLASCA, et al.) filed a Petition for Certiorari and Prohibition, which was docketed as G.R. No. 208282. They raise essentially the same arguments in G.R. No. 198688.[53]

Subsequently, respondent APEZA commented on the Petition in G.R. No. 208282[54] while public respondents adopted their Comment in G.R. No. 198688. Petitioners PIGLASCA, et al. filed their Reply.[55]

The Petitions were consolidated on August 13, 2013.[56]

In 2014, Chieftain Regina Eneria, Chieftain Vita Banayad, and Kagawad Manny Bekdayen, leaders of the Agta and Dumagat indigenous communities, withdrew as petitioners from the first Petition.[57] They assert that they were misled into believing that APECO would harm their communities.[58] On the contrary, they state that they were not displaced from their land and that they benefited from the opportunities brought by APECO. They further allege that they were made to sign the Petition without understanding its content.[59]

---

[51] Id. at 24-27.

[52] Id. at 25.

[53] *Rollo* (G.R. No. 208282), pp. 3-91. The Petition was filed under Rule 65 of the Rules of Court.

[54] *Rollo* (G.R. No. 198688), pp. 1816-1871 and 2230-2256.

[55] *Rollo* (G.R. No. 208282), pp. 407-416.

[56] Id. at 253-A-253-B.

[57] *Rollo* (G.R. No. 198688), pp. 2316-2326.

[58] Id. at 2317.

[59] Id. at 2318-2319.

Agrarian Reform Secretary Rafael Mariano likewise withdrew as petitioner to avoid a conflict of interest.[60]

Petitioners argue that their Petition is not procedurally infirm. While filing a direct petition before this Court contravenes the rule on hierarchy of courts, they say that it must be relaxed because the issues they raised are pure questions of law and are of transcendental importance.[61]

Petitioners further contend that a Rule 65 petition may assail the constitutionality of a law because this Court has the authority to determine grave abuse of discretion on the part of any government branch or instrumentality, including the legislature.[62] It lists several cases where this Court has acted on petitions for certiorari in determining whether the statutes are unconstitutional,[63] maintaining that this does not violate the doctrine of separation of powers.[64]

Moreover, petitioners assert that they raise a justiciable controversy, as they question the constitutionality of the law[65] and have the legal standing to do so.[66] The inclusion of agricultural lands and ancestral domains within APECO will affect their rights, as they stand to lose their homes and source of livelihood.[67] Petitioner organizations also have a personal

---

[60] Id. at 2444-2447.

[61] Id. at 1335-1336.

[62] Id. at 1337-1338.

[63] Id. at 1337-1339, citing *Tañada v. Angara*, 338 Phil. 546 (1997) [Per J. Panganiban, En Banc]; *Magallona v. Ermita*, 671 Phil. 243 (2011) [Per J. Carpio, En Banc]; *Luz Farms v. Secretary of the Department of Agrarian Reform*, 270 Phil. 151 (1990) [Per J. Paras, En Banc]; *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321 (1997) [Per J. Puno, En Banc]; *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

[64] Id. at 1343-1344.

[65] Id. at 1340-1342.

[66] Id. at 1344.

[67] Id. at 1345.

stake in the outcome of the case as taxpayers.[68] They also insist that they raised the issue of constitutionality at the earliest opportunity.[69]

On the substantive issues, petitioners mainly submit that the laws creating APECO must be struck down for violating constitutional and statutory provisions on agrarian reform, indigenous peoples' rights, rights of subsistence fisher folk, and local government's autonomy.[70]

First, petitioners contend that the assailed laws disregard social justice provisions on agrarian reform under Article II, Section 21[71] and Article XIII, Sections 1[72] and 4[73] of the Constitution as well as the Comprehensive Agrarian Reform Law.[74]

---

[68] Id. at 1345-1346.

[69] Id. at 1346.

[70] Id. at 1491.

[71] CONST., art. II, sec. 21 provides:

Section 21. The State shall promote comprehensive rural development and agrarian reform.

[72] CONST., art. XIII, sec. 1 provides:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

[73] CONST., art. XIII, sec. 4 provides:

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourge and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological. developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[74] *Rollo* (G.R. No. 198688), pp. 1354-1356, citing Republic Act No. 6657 (1988), sec. 27, which provides:

On this, petitioners assert that the compulsory coverage of farmlands within APECO deprives agrarian reform beneficiaries

---

Section 27. Transferability of Awarded Lands. — Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the barangay where the land is situated. The Provincial Agrarian Reform Coordinating Committee (PARCCOM) as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land[.]

Rollo (G.R. No. 208282), pp. 46-49, citing Republic Act No. 6657 (1988), as amended by Republic Act No. 9700 (2009), sec. 12, which provides:

Section 27. Transferability of Awarded Lands. — Lands acquired by beneficiaries under this Act or other agrarian reform laws shall not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries through the DAR for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the BARC of the barangay where the land is situated. The PARCCOM, as herein provided, shall, in turn, be given due notice thereof by the BARC.

....

If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself/herself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

of agricultural lands already awarded to them.[75] They cite a list of farmer-beneficiaries whose lands are covered by APECO, as admitted by the Department of Agrarian Reform.[76] The Department had also stated that the 110-hectare reservation is mostly agricultural and parts of it are being distributed to farmers, in accordance with Executive Order No. 448.[77]

Petitioners posit that including the distributed agricultural lands in APECO amounts to taking without payment of just compensation,[78] and deprives the farmer-beneficiaries of the beneficial use of the farm lots. They also assert that giving respondent APEZA the power to acquire lands even over the farmers' objections amounts to a deprivation of due process.[79]

Petitioners further claim that the compulsory coverage of the agricultural lots amounts to illegal conversion and reclassification of lands from agricultural to non-agricultural.[80]

---

[75] Id. at 1356 and *rollo* (G.R. No. 208282), pp. 49-50.

[76] Id. at 1357-1363. Petitioners claim that this was confirmed during a legislative investigation on APECO where the Department of Agrarian Reform admitted that around 525 hectare of agricultural land covered by APECO were already distributed to farmer-beneficiaries.

[77] Id. at 1363-1368, 1393-1399.

[78] Id. at 1369.

[79] Id. at 1371.

[80] Id. at 1374-1376 and *rollo* (G.R. No. 208282), pp. 49-51, citing Republic Act No. 6657, Sections 65 and 73 (d), (e), (f), which provides:

Section 65. Conversion of Lands. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the re-classification or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid his obligation;

Section 73. Prohibited Acts and Omissions. — The following are prohibited: ....

(d) The willful prevention or obstruction by any person, association or entity of the implementation of the CARP.

Conversion and reclassification of lands fall under the authority of the Department of Agrarian Reform and the local government unit, respectively, and not the legislature.[81]

Second, petitioners aver that APECO violates the provisions on subsistence fisherfolk under Article XIII, Section 7 and Article XII, Section 2 under the Constitution, as well as the Philippine Fisheries Code.[82] They point out that Section 12 of Republic Act No. 10083 breaches the preferential right of fisherfolk because respondent APEZA can now determine who operates the fishing industry.[83]

(e) The sale, transfer, conveyance or change of the nature of lands outside of urban centers and city limits either in whole or in part after the effectivity of this Act. The date of the registration of the deed of conveyance in the Register of Deeds with respect to titled lands and the date of the issuance of the tax declaration to the transferee of the property with respect to unregistered lands, as the case may be, shall be conclusive for the purpose of this Act.

(f) The sale, transfer or conveyance by a beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the provisions of this Act;

and Republic Act No. 7160 (1991), sec. 20, which provides:

Section 20. Reclassification of Lands. — (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: Provided, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance ...

[81] Id. at 1381-1388.

[82] Id. at 1409-1417, citing Republic Act No. 8550 (1998), secs. 2(a), (b), (d), (e), 3(a), (c), 5, 18, 21, 24, 34, 45, 65, 72, 80, 108, 119, and 126; *rollo* (G.R. No. 198688), pp. 56-59, citing Republic Act No. 8550 (1998), secs. 2, 5, 18, 21, and 24.

[83] *Rollo* (G.R. No. 208282), pp. 60-61.

While they concede that fisherfolk are not mentioned in the assailed laws, petitioners argue that APECO covers fishing grounds in Barangays Esteves, San Ildefonso, Cozo, and Dibet.[84] These fisherfolk, petitioners say, are bound to be deprived of their livelihood and residence because the adjoining lands and fishing grounds would be converted into a free port.[85] They will have no access to the rivers, creeks, and fishing grounds if these were placed under respondent APEZA's control.[86] They also lament the pollution of fishing grounds once shipping lanes are constructed.[87]

Third, petitioners contend that the laws contravene the rights of indigenous peoples under the Constitution and the Indigenous Peoples' Rights Acts of 1997.[88] APECO will cover around 11,900 hectares of land being claimed by 873 Agtas and Dumagats through their CADT applications,[89] violating Sections 8 and 11 of the law. Even if CADTs were not issued yet, petitioners assert that the ownership rights of indigenous peoples to their ancestral lands must be respected.[90] Although the Agtas and Dumagats still possess their lands, petitioners argue that they face the threat of eviction and displacement.[91]

Citing the National Commission on Indigenous Peoples, petitioners further claim that the assailed laws were passed without consultation and without their free and informed prior

---

[84] *Rollo* (G.R. No. 198688), pp. 1417-1420.

[85] Id. at 1420-1421.

[86] Id. at 1421.

[87] Id. at 1422-1423, citing an environmental study from the National Geographic.

[88] Id. at 1424-1428, citing CONST., Art. XII, sec. 5; Republic Act No. 8371, sec. 7 (a), (b), (c), sec. 58; and *rollo* (G.R. No. 208282), pp. 51-53, citing Const, art. II, sec. 2 and 10, art. XIII, sec. 6.

[89] Id. at 1428.

[90] Id. at 1432-1436.

[91] Id. at 1436-1437.

consent, in violation of Section 3(g) of the law.[92] They also claim that this violates the right of the Agtas and Dumagats to participate in decision-making, to determine and decide their priorities for development, and to protect their culture.[93]

Fourth, petitioners allege that due process was violated, since the people of Casiguran were not consulted before the laws were passed.[94] There is also a violation of the non-impairment clause because the APECO covers lands under existing stewardship contracts.[95] Petitioners, who are grantees of stewardship agreements, are authorized to use and cultivate the forest. They say that APECO modifies the terms of these agreements.[96]

Fifth, petitioners contend that APECO contravenes Article X, Section 10 of the Constitution and Section 9 of the Local Government Code.[97] They point out that APECO's establishment entails abolishing and altering political units, while its creation needs a plebiscite, along with sufficient income, population, and land area.[98] The lack of prior consultation and approval from the local government likewise violates Section 27 of the Local Government Code.[99] They also say that the local government's power to tax is undermined, as activities within APECO are exempted from local tax ordinances.[100]

---

[92] Id. at 1429-1432, citing Republic Act No. 8371, sec. 3(g), sec. 16, sec. 17. Also citing the testimony of Jonathan Adaol, Legal Office of the National Commission on Indigenous Peoples. *See also*; *rollo* (G.R. No. 208282), pp. 53-54, sec. 13, 16, 17, 29.

[93] Id. at 1429-1430.

[94] Id. at 1438-1439.

[95] Id. at 1439-1440.

[96] Id. at 1441-1442.

[97] Id. at 1442-1443.

[98] Id. at 1444.

[99] Id. at 1444-1445.

[100] *Rollo* (G.R. No. 208282), pp. 68-69.

Sixth, petitioners assert that the assailed laws violate Article XII, Section 21 of the Constitution for granting respondent APEZA the authority to contract foreign loans without approval of the President, the Department of Finance, or the Central Bank.[101] The law further violates Article XII, Section 11 of the Constitution for authorizing foreign investors to operate public utilities in whatever proportion.[102]

Further, petitioners claim that respondent APEZA acquires productive lands and marine resources for an unprofitable venture.[103] Citing a study on special economic zones, petitioners deduce that APECO is a waste of public funds and it will only benefit large corporations and APECO officers.[104] Petitioners add that labor rights are exploited within APECO because labor standards are relaxed to attract investors.[105]

Petitioners highlight that APECO failed the National Economic and Development Authority's Economic Viability Asessment.[106] In the report, it was cautioned that APECO's economic viability will be undermined unless certain risks are addressed;[107] and that APECO also does not have a master plan.[108]

Finally, petitioners contend that one politically powerful family will occupy the APECO Board of Directors because of its arbitrary classification. They point out that the Board of Directors is mostly composed of government officials such as the governor, congressional representatives, and mayors within

---

[101] *Rollo* (G.R. No. 198688), pp. 1448 -1449, 1457-1459, citing Republic Act No. 6395 , sec. 8; Republic Act No. 4860, sec. 4-A; Republic Act No. 10083, sec. 12(h).

[102] Id. at 1460-1461, citing Republic Act No. 10083. sec. 4(d), sec. 12.

[103] Id. at 1462.

[104] Id. at 1463-1469.

[105] Id. at 1485.

[106] *Rollo* (G.R. No. 208282), p. 44.

[107] Id. at 45-46.

[108] Id. at 61-67.

Casiguran. With this composition, only a single family will reap the benefits from APECO.[109] Further, APECO creates a super body which makes it a sovereign entity above the national and local government.[110]

For their part, respondents point out that the Petitions suffer from procedural defects.[111] They say that a Rule 65 petition is improper because respondents are not exercising judicial or quasi-judicial functions, and that there are no allegations that it acted with grave abuse of discretion. They also point out that petitioners' proper recourse was a petition for declaratory relief,[112] over which this Court lacks jurisdiction.[113]

Respondents also argue that petitioners disregarded the doctrines of primary jurisdiction and exhaustion of administrative remedies,[114] as their Petitions raised issues that should have gone through the proper bodies.[115] Under the Indigenous Peoples' Rights Act, claims involving the rights of indigenous peoples fall under the exclusive primary jurisdiction of the National Commission on Indigenous Peoples.[116]

Respondents also contend that petitioners are guilty of forum shopping. It cites that a petition for the coverage of the agrarian reform program and alleged conversion of agricultural lands within APECO is presently lodged before the Department of Agrarian Reform.[117]

---

[109] *Rollo* (G.R. No. 198688), pp. 1485-1487.

[110] *Rollo* (G.R. No. 208282), pp. 69-70.

[111] *Rollo* (G.R. No. 198688), pp. 939-940; 1716.

[112] Id. at 1716-1718; 939-945.

[113] Id. at 1718-1719, 944-945, citing RULES OF COURT, rule 63, sec. 1.

[114] Id. at 2232.

[115] Id. at 2233.

[116] Id. at 2237, citing Republic Act No. 8371 (1997), Secs. 66, 67, 69, and 70.

[117] Id. at 2241. The case is docketed as 1-0400-0423-13 (A.R. Case LSD '300'13) entitled, "Re: Alleged Land Conversion Activities within the APECO-area-containing an aggregate area of 2.5 Hectares, More orlLess, all located at Sitio Landing-Barangay Exteves, Casiguran. Aurora.

Respondents further allege that the Petitions lack the requisites of judicial review.

First, they contend that petitioners failed to present a justiciable controversy,[118] questioning the wisdom behind APECO but failing to prove any constitutional violation.[119] They maintain that delving into the laws' wisdom violates the separation of powers.[120]

Moreover, respondents argue that petitioners have no legal standing to sue because they lack the personal and substantial interest.[121] Petitioners are party-lists, sectoral organizations, and informal settlers who all have failed to sufficiently establish a substantial, direct, immediate, or imminent injury as a result of the laws' passage.[122]

Further, respondents note that petitioners did not question the validity of the laws at the earliest opportunity. It took four years since Republic Act No. 9490's enactment before they challenged its validity.[123]

Respondents likewise assert that the Petitions violate the rule on hierarchy of courts because a petition for certiorari should be filed first before a regional trial court.[124] They go on to say that relaxing the rules is not warranted without any special and important reasons.[125] They add that the Petitions are loaded with factual questions which must be resolved in a full-blown trial.[126]

---

[118] Id. at 1720; 945-953.

[119] Id. at 1721; 945-953.

[120] Id. at 1721; 945-953.

[121] Id. at 1722.

[122] Id. at 1723.

[123] Id. at 1723.

[124] Id. at 1724.

[125] Id. at 1724; 953-954.

[126] Id. Respondents note the factual issues raised as follows; whether or not the APECO covered ancestral lands and agrarian reform lands, whether

Respondents maintain that petitioners failed to show a clear, palpable, and plain violation of the Constitution.[127] The declaration of principles and state policies as well as provisions on social justice under the Constitution are mere guidelines,[128] and thus, not sources of rights or obligations.[129] In any case, respondents maintain that there are no violations of these policies.[130]

Moreover, they allege that petitioners' claim of land grabbing is baseless. Lands within the 110-hectare landholding claimed by agrarian reform beneficiaries were never covered by the Comprehensive Agrarian Reform Program.[131] By virtue of Proclamation No. 723, this landholding became part of inalienable land of public domain long before the enactment of the Comprehensive Agrarian Reform Law.[132] Respondents aver that such lands reserved for public purpose are excluded from the coverage.[133]

Respondents also argue that Executive Order No. 448 cannot revoke a reservation, as this may only be done through a law or proclamation.[134] They say that the executive order's delegation of authority to the Agrarian Reform Secretary to reclassify lands for disposition to farmers is impermissible,[135] as this was

---

or not the affected local government units and indigenous communities were consulted, and whether or not there was displacement of indigenous peoples and agrarian reform beneficiaries.

[127] Id. at 1725.

[128] Id.

[129] Id. at 1727-1728.

[130] Id. at 1838-1841.

[131] Id. at 1728-1729.

[132] Id. at 1729-1730, citing Proclamation No. 723, sec. 81. Act No. 2874, sec. 86, Commonwealth Act No. 141, sec. 88.

[133] Id. at 1731-1733.

[134] Id. at 1733-1735.

[135] Id. at 1736.

specifically delegated to the President by law.[136] Respondents add that Executive Order No. 448 unduly amends Commonwealth Act No. 141 and the Comprehensive Agrarian Reform Law. They add that the executive order did not comply with the publication requirement.[137]

Respondents further assert that petitioners were not deprived of their lands. The establishment of APECO did not *ipso facto* transfer ownership of the lands to respondent APEZA. APEZA was merely given the authority to acquire properties within APECO and it has yet to acquire the private lands through legal modes of acquisition.[138] Moreover, the inclusion of lands in an economic zone does not require conversion or reclassification.[139] Under the Special Economic Zone Act of 1995, conversion is required for the establishment of an economic zone only when a private industrial estate voluntarily applies for it.[140] In any case, Congress has the plenary power to reclassify and convert agricultural land.[141]

As to subsistence fisherfolk, respondents contend that the laws do not deprive them of their preferential right to use the local marine and fishing resources.[142] Petitioners are merely speculating that they will be deprived access to fishing grounds. In any event, this preferential right is not absolute, but remains under the State's supervision.[143]

Respondents also belie petitioners' claim that indigenous peoples were divested of their ancestral lands.[144] They first point

---

[136] Id. at 1735-1736.

[137] Id. at 1736-1740.

[138] Id. at 960-963, 1742-1744.

[139] Id. at 965.

[140] Id. at 968-969, citing Republic Act No. 7916 (1995), sec. 5 (MM).

[141] Id. at 1744.

[142] Id. at 973-976, 1745.

[143] Id. at 973-976, 1745-1746.

[144] Id. at 977, 1746.

out that petitioners did not show proof of their native title over the claimed lands, and even if they have CADT applications, their right over the lands is not determined until the certificates are issued.[145]

Respondents further point out that there is no violation of due process. Notice and hearing are not required for the validity of the laws.[146] They add that even under its own rules, Congress retains discretion on the conduct of public hearing.[147] Moreover, they note that APECO is not a political subdivision which requires a plebiscite and compliance with the Local Government Code.[148]

Likewise, respondents say that the contention on undue impairment of stewardship agreements is speculative, as petitioners failed to prove that these agreements exist, and without showing that their implementation was violated by the creation of APECO.[149]

Moreover, respondents assert that the laws do not confer upon respondent APEZA any legislative power to expand and reduce its territory.[150] It is merely delegated an administrative function to execute the law.[151]

On the issue on foreign investment, respondents stress that the assailed laws do not dispense with the compliance of citizenship requirements and rules on investment on public utilities.[152] Further, the authority to contract a foreign loan may be validly delegated to respondent APEZA, as a government-

---

[145] Id. at 1747.

[146] Id. at 954-956, 1748, *citing Disomangcop v. Datumanong*, 486 Phil. 398 (2004) [Per J. Tinga, En Banc].

[147] Id. at 1748-1749; 954-956.

[148] Id. at 1749; 971-973.

[149] Id. at 979-980.

[150] Id. at 1750.

[151] Id. at 1750-1752.

[152] Id. at 1752-1753.

owned or controlled corporation.[153] The Central Bank Monetary Board's concurrence is not indispensable in contracting foreign loans.[154]

Respondents also dismiss as mere speculation claims of insufficient labor protection within APECO. They note that Republic Act No. 10083, Section 17-A provides that labor and management relations within the zone are governed by applicable laws.[155]

Respondents further point out that the economic viability of the APECO is a question of fact, which may not be entertained by this Court. Moreover, they point out that the report from the National Economic and Development Authority is merely a recommendation to Congress. In any event, petitioners have allegedly misled this Court, given that the report acknowledges APECO's potential to spur economic growth in Aurora.[156]

Lastly, assuming that the questioned provisions are held void, respondents aver that this does not render the entire APECO void.[157]

For this Court's resolution are the following procedural issues:

First, whether or not a petition for certiorari is a proper remedy to assail the constitutionality of a statute;

Second, whether or not the Petitions failed to comply with the requisites for judicial review; and

Third, whether or not the relaxation of the rule on hierarchy of courts is warranted.

As for the substantive issues:

First, whether or not APECO violates the constitutional and

---

[153] Id. at 1753-1754.

[154] Id. at 1754.

[155] Id. at 980.

[156] Id. at 1845-1851.

[157] Id. at 1755.

statutory provisions on the agrarian reform, local autonomy, rights of indigenous peoples, and subsistence fisherfolk; and

Second, whether or not APECO violates due process, the non-impairment clause, the equity requirement, and the provisions on foreign borrowing.

I

This Court's power of judicial review springs from Article VIII, Section 1 of the Constitution:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

This provision articulates the courts' traditional and expanded powers of judicial review.[158] Prior to the 1987 Constitution, judicial review is confined to its traditional ambit of settling actual controversies involving legally demandable and enforceable rights.[159]

Under the present Constitution, the expanded power of judicial review includes the "power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality."[160] Its scope was deliberately enlarged to "prevent courts from seeking refuge behind the political

---

[158] *GSIS Family Bank Employees Union v. Villanueva*, G.R. No. 210773, January 23, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64921> [Per J. Leonen, Third Division].

[159] *Araullo v. Aquino III*, 737 Phil. 457, 524-525 (2014) [Per J. Bersamin, En Banc].

[160] *GSIS Family Bank Employees Union v. Villanueva*, G.R. No. 210773, January 23, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64921> [Per J. Leonen, Third Division].

question doctrine and turning a blind eye to abuses committed by the other branches of government."[161]

The broad grant of power under the expanded view contrasts with the remedy of certiorari under Rule 65 of the Rules of Court,[162] which states:

> SECTION 1. Petition for certiorari. — When any tribunal, board or officer *exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction*, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Emphasis supplied)

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,[163] this Court held that before the 1987 Constitution, certiorari under Rule 65 is strictly applied to correct only "errors of jurisdiction of judicial and quasi-judicial bodies, and cannot be used to correct errors of law or fact."[164] When the expanded jurisdiction of judicial review was introduced in the Constitution, this Court has "allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction based on its power to relax its Rules."[165]

---

[161] Id.

[162] Id.

[163] 802 Phil. 116 (2016) [Per J. Brion, En Banc].

[164] Id. at 136-137 *citing Madrigal Transport Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768 (2004) [Per J. Panganiban, Third Division].

[165] Id. at 139.

However, this ad hoc approach requires a careful distinction between petitions under the expanded jurisdiction and those under Rule 65:

The two situations differ in the type of questions raised. The first is the constitutional situation where the constitutionality of acts are questioned. The second is the non-constitutional situation where acts amounting to grave abuse of discretion are challenged without raising constitutional questions or violations.

The process of questioning the constitutionality of a governmental action provides a notable area of comparison between the use of certiorari in the traditional and the expanded modes.

Under the traditional mode, plaintiffs question the constitutionality of a governmental action through the cases they file before the lower courts; the defendants may likewise do so when they interpose the defense of unconstitutionality of the law under which they are being sued. A petition for declaratory relief may also be used to question the constitutionality or application of a legislative (or quasi-legislative) act before the court.

For quasi-judicial actions, on the other hand, certiorari is an available remedy, as acts or exercise of functions that violate the Constitution are necessarily committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution. Under both remedies, the petitioners should comply with the traditional requirements of judicial review, discussed below. In both cases, the decisions of these courts reach the Court through an appeal by certiorari under Rule 45.

In contrast, existing Court rulings in the exercise of its expanded jurisdiction have allowed the direct filing of petitions for certiorari and prohibition with the Court to question, for grave abuse of discretion, actions or the exercise of a function that violate the Constitution. *The governmental action may be questioned regardless of whether it is quasi-judicial, quasi-legislative, or administrative in nature. The Court's expanded jurisdiction does not do away with the actual case or controversy requirement for presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a prima facie showing of grave abuse of discretion in the exercise of the governmental act.*

To return to judicial review heretofore mentioned, in constitutional cases where the question of constitutionality of a governmental action is raised, the judicial power the courts exercise is likewise identified as the power of judicial review—the power to review the constitutionality of the actions of other branches of government. As a rule, as required by the hierarchy of courts principle, these cases are filed with the lowest court with jurisdiction over the matter. The judicial review that the courts undertake requires:

> (1) there be an actual case or controversy calling for the exercise of judicial power;
>
> (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
>
> (3) the question of constitutionality must be raised at the earliest possible opportunity; and
>
> (4) the issue of constitutionality must be the very *lis mota* of the case.

The lower court's decision under the constitutional situation reaches the Supreme Court through the appeal process, interestingly, through a petition for review on certiorari under Rule 45 of the Rules of Court.

In the non-constitutional situation, the same requirements essentially apply, less the requirements specific to the constitutional issues. In particular, there must be an actual case or controversy and the compliance with requirements of standing, as affected by the hierarchy of courts, exhaustion of remedies, ripeness, prematurity, and the moot and academic principles.[166] (Emphasis supplied)

Such distinction, however, does not preclude this Court from resolving Rule 65 petitions involving government branches or instrumentalities that do not exercise judicial, quasi-judicial, or ministerial functions. In *Araullo v. Aquino III*:[167]

---

[166] Id. at 148-151.

[167] 737 Phil. 457 (2014) [Per J. Bersamin, En Banc].

With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1 [.]

Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[168] (Citations omitted)

Hence, this Court may review Rule 65 petitions, as in these present cases, assailing a legislative act.

II

This Court shares concurrent jurisdiction with lower courts over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*.[169] Under the rule on hierarchy of courts, a petition must first be brought before the lowest court with jurisdiction and then appealed before it reaches this Court.[170] This concurrent jurisdiction does not give the party discretion on where to file their petition.[171]

---

[168] Id. at 531.

[169] *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34 (2002) [Per J. Sandoval-Gutierrez, Third Division]. *See also Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016) [Per J. Brion, En Banc].

[170] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 149-151 (2016) [Per J. Brion, En Banc].

[171] *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34 (2002) [Per J. Sandoval-Gutierrez, Third Division].

This Court is a court of last resort. To directly invoke its original jurisdiction, there must be convincing and significant reasons set out in the petition, along with compliance with our rules on justiciability.[172]

Observing the rule on hierarchy of courts is a constitutional imperative arising from two important considerations, as held in *Gios-Samar, Inc. v. Department of Transportation and Communications*:[173] first, our judicial structure; and second, the requirements of due process.

The hierarchy of courts is borne out of the establishment of various levels of courts under the Constitution and our procedural laws. This includes how courts interact with respect to each other's rulings, as well as the determination of proper forum for appeals and petitions.[174]

Under our procedural rules, trial and appellate courts can resolve both questions of law and fact, while this Court is generally only authorized to settle questions of law. It is not a trier of facts. Whether in the exercise of its original or appellate jurisdiction, this Court is not equipped to receive and weigh evidence at the first instance because its main role is to apply the law based on established facts.[175]

The initial reception and appreciation of evidence is a function given to lower courts. In *The Diocese of Bacolod v. Commission on Elections*:[176]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence

---

[172] Id. at 34-35.

[173] G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

[174] Id.

[175] Id.

[176] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.[177] (Citation omitted)

When petitions are directly filed before this Court, the judicial structure is bypassed and there is a risk that the facts alleged are incomplete and disputed. As a result, this Court may not be equipped to resolve the case.[178]

Adherence to the rule on judicial hierarchy is also hinged on due process.[179] By going through the judicial structure, litigants are given the opportunity to present and establish their evidence before the trial court. Conversely, by directly filing before this Court, litigants undermine their right to due process by depriving themselves of the "opportunity to completely pursue or defend their causes of actions."[180] In *Republic v. Sandiganbayan*:[181]

The resolution of controversies is, as everyone knows, the *raison d'etre* of courts. This essential function is accomplished by first, the

---

[177] Id. at 329-330.

[178] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

[179] Id.

[180] Id.

[181] 281 Phil. 234 (1991) [Per J. Narvasa, En Banc].

ascertainment of all the material and relevant facts from the pleadings and from the evidence adduced by the parties, and second, after that determination of the facts has been completed, by the application of the law thereto to the end that the controversy may be settled authoritatively, definitely and finally.

It is for this reason that a substantial part of the adjective law in this jurisdiction is occupied with assuring that all the facts are indeed presented to the Court; for obviously, to the extent that adjudication is made on the basis of incomplete facts, to that extent there is faultiness in the approximation of objective justice. It is thus the obligation of lawyers no less than of judges to see that this objective is attained; that is to say, that there be no suppression, obscuration, misrepresentation or distortion of the facts; and that no party be unaware of any fact material and relevant to the action, or surprised by any factual detail suddenly brought to his attention during the trial.[182] (Citation omitted)

Further, the doctrine is a filtering mechanism. It averts inordinate demands on this Court's attention, time, and resources, which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of its docket.[183]

This Court cannot be burdened with the functions of the lower courts. By mandate, it must not be so engrossed with cases limited to transient rights and obligations of individuals, as it is called on to settle matters involving "national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights."[184] With the hierarchy of courts, this Court can direct its attention to such cases that allow it to perform more fundamental tasks assigned by the Constitution. Thus:

In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of certiorari,

---

[182] Id. at 251.

[183] *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34-35 (2002) [Per J. Sandoval-Gutierrez, Third Division].

[184] *Alonso v. Cebu Country Club, Inc.*, 632 Phil. 637, 648 (2010) [Per J. Bersamin, First Division].

prohibition, mandamus, *quo warranto*, and *habeas corpus* (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the *raison d'etre* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.[185] (Citations omitted)

However, the doctrine is not an ironclad rule. Exceptions may be admitted if the ends of justice are defeated by a rigid adherence to the rules of procedures and technicalities. This Court has full discretion to take cognizance of special civil actions for certiorari filed directly before it if there are compelling reasons.[186]

In *The Diocese of Bacolod*, we provided exceptions to the doctrine of hierarchy of courts accepted by this Court, to wit:

(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
(b) when the issues involved are of transcendental importance;
(c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter;
(d) the constitutional issues raised are better decided by the Court;

---

[185] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

[186] *Roque, Jr. v. Commission on Elections*, 615 Phil. 149, 200-201 (2009) [Per J. Velasco, Jr., En Banc].

(e) where exigency in certain situations necessitate urgency in the resolution of the cases;
(f) the filed petition reviews the act of a constitutional organ;
(g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law; and
(h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[187]

However, to invoke any of these exceptions, petitioners must purely raise questions of law. The decisive factor is not the invocation of special and important reasons, but the nature of the question raised in the petition.[188]

In *Gios-Samar*, we clarified that in a long line of cases where exceptions to the hierarchy of courts were allowed, there were clear factual parameters, enabling this Court to resolve the cases without needing further information and clarifying disputed facts:

> An examination of the cases wherein this Court used "transcendental importance" of the constitutional issue raised to excuse violation of the principle of hierarchy of courts would show that resolution of factual issues was not necessary for the resolution of the constitutional issue/s. These cases include *Chavez v. Public Estates Authority. Agan, Jr. v. Philippine International Air Terminals Co., Inc., Jaworski v. Philippine Amusement and Gaming Corporation, Province of Batangas v. Romulo, Aquino III v. Commission on Elections, Department of Foreign Affairs v. Falcon, Capalla v. Commission on Elections, Kulayan v. Tan, Funa v. Manila Economic & Cultural Office, Ferrer, Jr. v. Bautista, and Ifurung v. Carpio-Morales*. In all these cases, there were no disputed facts and the issues involved were ones of law.

---

[187] *The Diocese of Bacold v. Commission on Elections*, 751 Phil. 301, 331-334 (2015) [Per J. Leonen, En Banc].

[188] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https.//elibrary. judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

In *Agan*, we stated that "[t]he facts necessary to resolve these legal questions are well established and, hence, need not be determined by a trial court." In *Jaworski*, the issue is whether Presidential Decree No. 1869 authorized the Philippine Amusement and Gaming Corporation to contract any part of its franchise by authorizing a concessionaire to operate internet gambling. In *Romulo*, we declared that the facts necessary to resolve the legal question are not disputed. In *Aquino III*, the lone issue is whether RA No. 9716, which created an additional legislative district for the Province of Camarines Sur, is constitutional. In *Falcon*, the threshold issue is whether an information and communication technology project, which does not conform to our traditional notion of the term "infrastructure," is covered by the prohibition against the issuance of court injunctions under RA No. 8975. Similarly, in *Capalla*, the issue is the validity and constitutionality of the Commission on Elections' Resolutions for the purchase of precinct count optical scanner machines as well as the extension agreement and the deed of sale covering the same. In *Kulayan*, the issue is whether Section 465 in relation to Section 16 of the Local Government Code authorizes the respondent governor to declare a state of national emergency and to exercise the powers enumerated in his Proclamation No. 1-09. In *Funa*, the issue is whether the Commision on Audit is, under prevailing law, mandated to audit the accounts of the Manila Economic and Cultural Office. In *Ferrer*, the issue is the constitutionality of the Quezon City ordinances imposing socialized housing tax and garbage fee. In *Ifurung*, the issue is whether Section 8 (3) of RA No. 6770 or the Ombudsman Act of 1989 is constitutional.

More recently, in *Aala v. Uy*, the Court *En Banc*, dismissed an original action for certiorari, prohibition, and mandamus, which prayed for the nullification of an ordinance for violation of the equal protection clause, due process clause, and the rule on uniformity in taxation. We stated that, not only did petitioners therein fail to set forth exceptionally compelling reasons for their direct resort to the Court, they also raised factual issues which the Court deems indispensable for the proper disposition of the case. We reiterated the time-honored rule that we are not a trier of facts: "[T]he initial reception and appreciation of evidence are functions that [the] Court cannot perform. These are functions best left to the trial courts."

To be clear, the transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of

a case in the first instance, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18, Article VII of the 1987 Constitution.[189] (Citations omitted)

Without clear and specific allegations of facts, this Court cannot rule on the rights and obligations of the parties. Invoking an exception to the hierarchy of courts does not do away with a petition's infirmities. This is more apparent in petitions which require resolutions of factual issues that are indispensable for cases' proper disposition.

III

A case is justiciable if the following are present: "(1) an actual case or controversy over legal rights which require the exercise of judicial power; (2) standing or locus standi to bring up the constitutional issue; (3) the constitutionality was raised at the earliest opportunity; and (4) the constitutionality is essential to the disposition of the case or its *lis mota*."[190]

An actual case or controversy exists when there is "a conflict of legal right, an opposite legal claims susceptible of judicial resolution."[191] In *David v. Macapagal-Arroyo*:[192]

An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest," a real and substantial controversy admitting of specific relief.[193]

---

[189] Id.

[190] *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> Per J. Leonen, En Banc].

[191] *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[192] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[193] Id. at 753.

In *Kilusang Mayo Uno v. Aquino III*:[194]

A petitioner bringing a case before this Court must establish that there is a legally demandable and enforceable right under the Constitution. There must be a real and substantial controversy, with definite and concrete issues involving the legal relations of the parties, and admitting of specific relief that courts can grant.

This requirement goes into the nature of the judiciary as a co-equal branch of government. It is bound by the doctrine of separation of powers, and will not rule on any matter or cause the invalidation of any act, law, or regulation, if there is no actual or sufficiently imminent breach of or injury to a right. The courts interpret laws, but the ambiguities may only be clarified in the existence of an actual situation.

In *Lozano v. Nograles*, the petitions assailing House Resolution No. 1109 were dismissed due to the absence of an actual case or controversy. This Court held that the "determination of the nature, scope[,] and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its 'solemn and sacred obligation' under the Constitution." The judiciary's awesome power of review is limited in application.

Jurisprudence lays down guidelines in determining an actual case or controversy. In *Information Technology Foundation of the Philippines v. Commission on Elections*, this Court required that "the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue." Further, there must be "an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

Courts, thus, cannot decide on theoretical circumstances. They are neither advisory bodies, nor are they tasked with taking measures to prevent imagined possibilities of abuse.[195] (Citations omitted)

---

[194] G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[195] *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

To have a justiciable case, a conflict of rights must have "sufficient concreteness or adversariness."[196] A real conflict must exist based on specific facts to ascertain whether the Constitution was indeed violated. Without an actual case, this Court's decisions are reduced to academic exercises with no genuine resolutions for the parties,[197] and a case is not ripe for judicial determination. In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:[198]

> An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution." A case is justiciable if the issues presented are "definite and concrete, touching on the legal relations of parties having adverse legal interests." The conflict must be ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court 's decision will amount to an advisory opinion concerning legislative or executive action.[199]

When a case ceases to present an actual case, courts generally decline jurisdiction because a resolution would be of no practical use or value.[200] This Court will only pass upon the constitutionality of a statute "only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[201]

---

[196] Id.

[197] Id.

[198] G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

[199] Id. at 98-99.

[200] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[201] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 98 [Per J. Leonen, En Banc] citing *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per J. Bengzon, En Banc].

The second requisite of legal standing, or *locus standi*, is defined as "a right of appearance in a court of justice on a given question."[202] In *Belgica v. Ochoa*:[203]

> The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing.[204] (Citation omitted)

To possess *locus standi*, a party must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged."[205] "Interest" in this context means material interest, and not mere incidental interest.[206]

The rationale behind the need of actual case and legal standing is further discussed in *Provincial Bus Operators Association of the Philippines*:

> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
>
> > A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity

---

[202] *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[203] 721 Phil. 416 (2013) [Per J . Perlas-Bernabe, En Banc].

[204] Id. at 527.

[205] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 103 [Per J. Leonen, En Banc].

[206] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per J. Kapunan, En Banc].

> of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[207] (Citations omitted)

A direct injury is required to be shown to guarantee that the filing party has a "personal stake in the outcome of the controversy and, in effect, assures 'that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.'"[208] Thus, the person praying for a judicial remedy must show "a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic."[209] In *Information Technology Foundation of the Philippines v. Commission on Elections*:[210]

> "... [C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging." The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[211] (Citations omitted)

---

[207] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

[208] Id. at 104.

[209] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116 (2016) [Per J. Brion, En Banc].

[210] 499 Phil. 281 (2005) [Per J. Panganiban, En Banc].

[211] Id. at 304-305.

Here, respondents claim that petitioners violated the hierarchy of courts when they did not first come to the lower courts. On the other hand, petitioners insist that their case is an exception, claiming that they raised issues of transcendental importance.

We disagree with petitioners.

While the Petitions claim that the laws violate several constitutional provisions, showing an actual case is indispensable. Transcendental importance is not an exception to justiciability.

Here, the Petitions do not purely raise questions of law. There were allegations of facts which are disputed, such as the lack of prior consultation, the displacement and deprivation of the residents' incomes, and which specific parcels of land were referred to in the Petitions. It is also unclear which lands are irrigated and irrigable. The sworn statements from affected residents likewise do not allege actual displacement and conversion, but merely the fear of possible, not actual, loss of livelihood and housing.

The Petitions are silent on the nature and degree of the purported injury that APECO has caused petitioners. Their allegations are further undermined by the withdrawal of several leaders of Agta and Dumagat indigenous cultural communities who, contrary to the statements in the Petitions, claimed that they were not displaced.[212] They further declared that their right to participate in decision-making was not violated.[213]

This Court also notes that cases are already pending before the Department of Agrarian Reform and the National Commission on Indigenous Peoples concerning the alleged land conversion and CADT applications.

While petitioners raised questions of law, these are inextricably intertwined with underlying questions of fact. There is a need to thresh out factual issues which this Court cannot address at this stage.

---

[212] *Rollo* (G.R. No. 198688), p. 2344.

[213] Id.

There are narrow instances when this Court may review a statute on its face despite the lack of an actual case. A facial review is allowed in cases of patently imminent violation of fundamental rights.[214] The violation must be so demonstrably blatant that it overrides the policy of constitutional deference. However, the facts constituting the violation must be complete, undisputed, and established in a lower court.[215]

Petitioners should have first gone to our trial courts, which are equipped to receive and assess evidence, and may later appeal before the appellate court, so that facts would be synthesized and conflicting claims resolved. By filing their Petitions immediately before this Court, petitioners missed the opportunity to have complete and clear factual submissions.

Without first resolving the factual disputes, it is not clear whether there was a direct, material, and substantial injury to petitioners. There is no factual concreteness and adversariness to enable this Court to determine the parties' rights and obligations.

An exception to the rule on hierarchy of courts is not warranted here. Strict adherence to the rule is our standing judicial policy. Bypassing it requires more than just raising issues of transcendental importance. To allow exceptions, there must first be justiciability.

At any rate, a review of the substantial issues is unavailing.

IV

The Constitution provides our agrarian reform policy. Article II, Section 21 declares it the State's policy to "promote comprehensive rural development and agrarian reform."[216] In

---

[214] *Imbong v. Ochoa, Jr.*, 732 Phil. 1, 125 (2014) [Per J. Mendoza, En Banc].

[215] *Parcon-Song v. Parcon*, G.R. No. 199582, July 7, 2020 <https://elibrary.judiciary.gov.ph/the bookshelf/showdocs/1/66525> [Per J. Leonen, En Banc].

[216] CONST., art. II, sec. 21.

addition, the Constitution has provisions emphasizing our policy on agrarian and natural resources under Article XIII. Sections 1 and 4 provide:

> SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.
>
> . . . . . .
>
> SECTION 4. *The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof.* To this end, the State shall encourage and undertake the just distribution of all agricultural lands, *subject to such priorities and reasonable retention limits as the Congress may prescribe*, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

In line with this constitutional directive, Republic Act No. 6657, or the Comprehensive Agrarian Reform Law, was enacted in 1988. The law provides a mechanism on conversion and reclassification of agricultural lands for other purposes. It authorized the Department of Agrarian Reform to "approve or disapprove applications for conversion of agricultural lands into non-agricultural uses."[217]

Republic Act No. 2264, which preceded the Local Government Code, had previously provided that local governments had the power to approve such reclassification by adopting zoning and

---

[217] *Heirs of Salas, Jr. v. Cabungcal*, 808 Phil. 138, 165-166 (2017) [Per J. Leonen, Second Division].

subdivision ordinances. Thus, before the Comprehensive Agrarian Reform Law, conversion and reclassification of agricultural lands did not need the approval of the Department of Agrarian Reform.[218]

At present, under Section 65 of the Comprehensive Agrarian Reform Law, conversion or reclassification may be allowed "when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes[.]"

Conversion is the "act of changing the current use of a piece of agricultural land into some other use[.]"[219] On the other hand, reclassification is the "act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion."[220] Although reclassification is indicative of which agricultural areas can be converted to non-agricultural uses, it does not involve an actual change in land use.[221]

Conversion is strictly regulated and may be allowed only upon compliance with the conditions under the Comprehensive Agrarian Reform Law.[222] Mere reclassification does not

---

[218] Id. at 166 *citing* Republic Act No. 2264 or the Local Autonomy Act of 1959.

[219] *Alarcon v. Court of Appeals*, 453 Phil. 373, 382 (2003) [Per J. Ynares-Santiago, First Division] citing DAR Administrative Order No. 01-99, sec. 2(k).

[220] Id. at 383 *citing* DAR Reform Administrative Order No. 01-99, sec. 2(r).

[221] Id.

[222] DAR Administrative Order No. 01-99, sec. 1(c) provides:

Section 1. Statement of Policies. — The conversion of agricultural lands to non-agricultural uses shall be governed by the following policies:

....

(c) Conversion of agricultural lands to non-agricultural uses shall be strictly regulated and may be allowed only when the conditions prescribed under RA 6657 and/or RA 8435 are present.

automatically allow a landowner to change its use. Conversion must be approved before a landowner is permitted to use the agricultural land for other purposes.[223]

The Department of Agrarian Reform's approval of the conversion of agricultural land into an industrial estate, or any other use, is a condition precedent before developing the land for industrial use.[224] Conversely, the lack of approval for the conversion means that the farmland was never placed beyond the scope of the Comprehensive Agrarian Reform Program.[225]

Ros v. Department of Agrarian Reform[226] ruled that after the passage of the Comprehensive Agrarian Reform Law, lands sought to be reclassified have to go through conversion, over which the Department of Agrarian Reform has jurisdiction.[227] Hence, even if the local government has approved the reclassification, the Department must still confirm it:

> The authority of the DAR to approve conversions of agricultural lands covered by Rep. Act No. 6657 to non-agricultural uses has not been pierced by the passage of the Local Government Code. The Code explicitly provides that "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Rep. Act No. 6657."[228] (Citation omitted)

Ros also settled that the Department of Agrarian Reform's express power over land use conversion should not be limited to cases where land has been awarded to farmer-beneficiaries. To suggest otherwise would be a loophole in the Comprehensive

---

[223] *Alarcon v. Court of Appeals*, 453 Phil. 373, 383 (2003) [Per J. Ynares-Santiago, First Division].

[224] *Ros v. Department of Agrarian Reform*, 505 Phil. 558, 566-570 (2005) [Per J. Chico-Nazario, Second Division].

[225] *DAR v. Polo Coconut Plantation Co., Inc.*, 586 Phil. 69, 79 (2008) [Per J. Corona, First Division].

[226] 505 Phil. 558 (2005) [Per J. Chico-Nazario, Second Division].

[227] Id. at 566.

[228] Id. at 570.

Agrarian Reform Law. To genuinely realize the thrust of the Comprehensive Agrarian Reform Law and to give full force to the express functions of the Department of Agrarian Reform, the reclassification and conversion of agricultural land must go through the Department of Agrarian Reform.[229]

Thus, respondents' argument that the Department of Agrarian Reform's approval is not required because the lands are not yet awarded must fail. To reiterate *Ros*, whether or not the land has been awarded to farmer-beneficiaries, the Department must approve the conversion.

Nevertheless, to require conversion and reclassification, it must be clearly shown which specific parcels of agricultural land are actually used for non-agricultural purpose. The laws creating APECO did not simultaneously transform the covered area for industrial use. There must be specific allegations clearly showing which agricultural lands were actually converted for other use or for what purpose they are now used.

Likewise, respondents are mistaken to argue that part of the 110-hectare reservation initially devoted for educational purposes cannot be declared part of the Comprehensive Agrarian Reform Program because there is no presidential proclamation declaring the land alienable and disposable.[230] The president may very well declare parcels of land alienable and disposable through an executive order, such as Executive Order No. 448.

Under Section 6 of Commonwealth Act No. 141, the prerogative to classify and reclassify land to alienable and disposable land is granted to the president,[231] who can declare

---

[229] Id. at 566.

[230] *Rollo* (G.R. No. 198688), p. 863.

[231] Commonwealth Act No. 141 (1936) sec. 6 provides:

Section 6. — The President, upon the recommendation of the Secretary of the Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

(a) Alienable or disposable;

(b) Timber, and

so in a presidential proclamation or an executive order. In *Spouses Fortuna v. Republic*:[232]

> The Constitution declares that all lands of the public domain are owned by the State. Of the four classes of public land, i.e., agricultural lands, forest or timber lands, mineral lands, and national parks, only agricultural lands may be alienated. Public land that has not been classified as alienable agricultural land remains part of the inalienable public domain. Thus, it is essential for any applicant for registration of title to land derived through a public grant to establish foremost the alienable and disposable nature of the land. The PLA provisions on the grant and disposition of alienable public lands, specifically, Sections 11 and 48 (b), will find application only from the time that a public land has been classified as agricultural and declared as alienable and disposable.
>
> Under Section 6 of the PLA, the classification and the reclassification of public lands are the prerogative of the Executive Department. The President, through a presidential proclamation or executive order, can classify or reclassify a land to be included or excluded from the public domain.[233] (Citations omitted)

Under Section 1-A of Executive Order No. 407, as amended by Executive Order No. 448, part of the 110-hectare reservation which is "no longer actually, directly and exclusively used or necessary for the purposes for which they have been reserved ... shall be segregated from the reservation and transferred to the Department of Agrarian Reform" for distribution under the Comprehensive Agrarian Reform Program.

However, as pointed out, it is not clearly shown which parcels of agricultural land within this reservation were actually converted for other use. The same goes for petitioners' contention on irrigated and irrigable lands. Under the rules and regulations on the conversion of agricultural lands, irrigated and irrigable

---

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

[232] 728 Phil. 373 (2014) [Per J. Brion, Second Division].

[233] Id. at 382-383.

lands cannot be subjected to conversion, but it is uncertain which of these lands were converted for other use. In fact, there is no allegation as to what non-agricultural purpose the lands are now used for.

The Comprehensive Agrarian Reform Law strictly mandates the procedure for conversion, as a safeguard against the circumvention of the redistributive component of the agrarian reform program. Through an exacting mechanism, the Department of Agrarian Reform can ensure that the farmer-beneficiaries can use and till their own land, but this mechanism does not kick in if there is no clear allegation and demonstration of land conversion.

Similarly, petitioners' claim of taking of property is untenable.

Economic zone authorities are granted the power to exercise eminent domain.[234] Owners of properties that were taken for

---

[234] Republic Act No. 7916 (1995), sec. 29 provides:

Section 29. Eminent Domain. —The areas comprising an ECOZONE may be expanded or reduced when necessary. For this purpose, the government shall have the power to acquire, either by purchase, negotiation or condemnation proceedings, any private lands within or adjacent to the ECOZONE for:

(a) Consolidation of lands for zone development purposes;

(b) Acquisition of right of way to the ECOZONE; and

(c) The protection of watershed areas and natural assets valuable to the prosperity of the ECOZONE;

Republic Act No. 9490 (2007), sec. 4(c), which provides:

Section 4. Governing Principles. — The Aurora Special Economic Zone shall be managed and operated by the Aurora Special Economic Zone Authority, hereinafter referred to as the ASEZA, created under Section 10 of this Act, under the following principles:

....

(e) The areas comprising the Aurora Ecozone may be expanded or reduced when necessary. For this purpose, the ASEZA, in consultation with the LGUs, shall have the power to acquire either by purchase, negotiation or condemnation proceedings, any private land within or adjacent to the Aurora Ecozone for the following purposes: (1) consolidation of lands for Aurora

public use are entitled to just compensation.[235] Without payment of just compensation, the government violates one's property right. When there is no expropriation proceeding, the private owner may compel the payment of the property taken.[236]

The elements of taking of private property are laid down in *Republic v. Vda. de Castellvi*,[237] namely: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry should be by legal authority; (4) the property must be devoted to a public use, or otherwise informally appropriated or injuriously affected; and (5) the property's utilization for public use must oust the owner and deprive them of all beneficial enjoyment of the property.[238]

None of the elements are present here. Petitioners failed to allege if and how respondent APEZA entered into the agricultural lands and ancestral lands. The statements from petitioner-residents simply voiced out fears of the economic zone's establishment, but none of them claimed that their lands were actually taken and occupied by respondent APEZA.

This Court cannot do guesswork to advocate for a party. There were no allegations that petitioners' properties were devoted to a public use, that the properties were injuriously affected, or that petitioners were deprived of the beneficial use of their lands. Whether the properties were impaired, or whether petitioners were prevented from using the properties as they intended—all these remain unclear.

Ecozone development; (2) acquisition of right of way to the Aurora Ecozone; and (3) the protection of watershed areas and natural assets valuable to the prosperity of the Aurora Ecozone.

[235] *Republic v. Ortigas & Co., Ltd. Partnership*, 728 Phil. 277, 291 (2014) [Per J. Leonen, Third Division].

[236] Id. at 293-295.

[237] 157 Phil. 329 (1974) [Per J. Zaldivar, En Banc].

[238] Id. at 345-346.

V

Article XII, Section 2 and Article XIII, Section 7 of the Constitution state the policy of protecting the nation's marine wealth and the rights of subsistence and marginal fisherfolk.[239]

In *Tano v. Socrates*,[240] this Court expounded on the import of these constitutional provisions. *Tano* ruled that Article XII,

---

[239] CONST., art. XII, sec. 2 provides:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

CONST., art. XIII, sec. 7 provides:

Section 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The Sate shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

[240] 343 Phil. 670 (1997) [Per J. Davide, Jr., En Banc].

Section 2 does not primarily aim to confer any right to subsistence fisherfolk, but only emphasizes "the duty of the State to protect the nation's marine wealth."[241] The provision only recognizes that "the State may allow, by law, cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons."[242]

On the other hand, Article XIII, Section 7 refers to the "use of communal marine and fishing resources" and "their protection, development and conservation."[243] *Tano* clarified that the "preferential right" of subsistence fisherfolk to use marine resources is not absolute, as the exploration, development, and use of marine resources are under the State's full control and supervision. Thus, the State may prescribe certain restrictions on the rights of subsistence fisherfolk as to their use and enjoyment of the marine resources.[244]

Nothing in Section 12(n) of Republic Act No. 9490, as amended, violates the exclusive use and exploitation of marine resources by allowing foreign intrusion. Section 12(n) provides:

> SECTION 12. Powers and Functions of the Aurora Pacific Economic Zone and Freeport Authority (APECO). — The APECO shall have the following powers and functions:
>
> . . . .
>
> (n) To authorize or undertake, on its own or through others, and to regulate the establishment, operation and maintenance of public utilities, services, and infrastructure in the Aurora Ecozone such as shipping, barging, stevedoring, cargo, handling, warehousing, storage of cargo, port services or concessions, piers, wharves, bulkheads, bulk terminals, mooring areas, storage areas, roads, bridges, terminals, conveyors, water supply and storage, sewerage, drainage, airport operations, in coordination with the Civil Aeronautics

---

[241] Id. at 702.

[242] Id.

[243] Id. at 703.

[244] Id.

> Board, and such other services or concessions or infrastructure necessary or incidental to the accomplishment of the objectives of this Act: Provided, however, That the private investors in the Aurora Ecozone shall be given priority in the awarding of contracts, franchises, licenses or permits for the establishment, operation and maintenance of utilities, services and infrastructures in the Aurora Ecozone[.]

Section 12(n) merely allows private investors to establish, operate, and maintain public utilities, services, and infrastructure in the economic zone. Petitioners failed to show that foreign investors were allowed to exploit the fishery and aquatic resources. Likewise, Section 12(n) does not violate the fisherfolk's right to the preferential use of the communal marine and fishing resources.

Similarly, neither Petition claimed that a free port was actually constructed along the shores of Casiguran to the prejudice of the fisherfolk. Petitioners did not identify instances when they were prevented from working in the fishing grounds. As such, this issue cannot properly be resolved.

VI

The Constitution expressly guarantees the rights of the indigenous cultural communities to their ancestral domains.[245] The protection and recognition of the indigenous peoples' inherent right to celebrate, develop, and preserve their cultural

---

[245] CONST., art. II, sec. 22 provides:

Section 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

CONST., art. XII, sec. 5 provides:

Section 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

integrity are fundamental to the State.[246] The State upholds their "right to live in a culture distinctly their own."[247]

To breathe life to this constitutional policy, Republic Act No. 8371, or the Indigenous Peoples' Rights Act of 1997, was enacted.

The law is a magna carta that covers the rights of indigenous peoples and corrects the grave historical injustice to our indigenous peoples.[248] It seeks to protect the indigenous peoples' rights "to their ancestral domains to ensure their economic, social and cultural well-being" and to "recognize, respect and protect [their] rights ... to preserve and develop their cultures, traditions and institutions."[249]

---

[246] *Heirs of Dicman v. Cariño*, 523 Phil. 630, 662 (2006) [Per J. Austria-Martinez, First Division].

[247] J. Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 960 (2000) [Per Curiam, En Banc].

[248] Id. at 932.

[249] Republic Act No. 8371 (1997), sec. 2 provides:

Section 2. Declaration of State Policies. — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:
a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;
e) The State shall take measures, with the participation of the ICCs/ IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

As this Court held in *Heirs of Dicman v. Cariño*:[250]

[The Indigenous Peoples' Rights Act is] a culminating measure to affirm the views and opinions of indigenous peoples and ethnic minorities on matters that affect their life and culture. The provisions of that law unify an otherwise fragmented account of constitutional, jurisprudential and statutory doctrine which enjoins the organs of government to be vigilant for the protection of indigenous cultural communities as a marginalized sector, to protect their ancestral domain and ancestral lands and ensure their economic, social, and cultural well-being, and to guard their patrimony[.][251] (Citations omitted)

In explaining land ownership within the context of indigenous cultural communities, Chief Justice Reynato Puno, in his separate opinion in *Cruz v. Secretary of Environment and Natural Resources*,[252] pointed out that land titles do not exist within their economic and social system. "Land is the central element of the indigenous peoples' existence"[253] and their concept of land ownership is not permanent and individual, but communal:

The people are the secondary owners or stewards of the land and that if a member of the tribe ceases to work, he loses his claim of ownership, and the land reverts to the beings of the spirit world who are its true and primary owners. Under the concept of "trusteeship,"

---

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

[250] 523 Phil. 630 (2006) [Per J. Austria-Martinez, First Division].

[251] Id. at 662-663.

[252] 400 Phil. 904 (2000) [Per Curiam, En Banc].

[253] Then J. Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 961 (2000) [Per Curiam, En Banc].

the right to possess the land does not only belong to the present generation but the future ones as well.

Customary law on land rests on the traditional belief that no one owns the land except the gods and spirits, and that those who work the land are its mere stewards. Customary law has a strong preference for communal ownership, which could either be ownership by a group of individuals or families who are related by blood or by marriage, or ownership by residents of the same locality who may not be related by blood or marriage. The system of communal ownership under customary laws draws its meaning from the subsistence and highly collectivized mode of economic production.[254] (Citations omitted)

Under Section 5 of the law, the indigenous concept of ownership "sustains the view that ancestral domains and all resources found therein shall serve as the material bases of [the indigenous peoples'] cultural integrity." This concept acknowledges that ancestral domains are their "private but community property" which "belongs to all generations and therefore cannot be sold, disposed or destroyed."[255] This is anchored on ancestral domain's moral import: "'belongingness' to the land, being people of the land." For indigenous peoples, there is "fidelity of usufructuary relation to the land."[256]

The indigenous peoples' rights to their ancestral domains by virtue of native title is recognized by the law. Section 3(1) defines native titles as "pre-conquest rights to lands and domains" over which indigenous peoples have long held a claim of private

---

[254] Id. at 961-962.

[255] Republic Act No. 8371 (1997), sec. 5 provides:

Section 5. Indigenous Concept of Ownership. — Indigenous concept of ownership sustains the view that ancestral and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

[256] J. Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 999 (2000) [Per Curiam, En Banc].

ownership, and which have never been public lands, "and are thus indisputably presumed to have been held that way since before the Spanish Conquest[.]"[257]

The indigenous concept of ownership exists even without a paper title.[258] The indigenous peoples' ownership over their ancestral domain even precedes the Indigenous Peoples' Rights Act.[259] Thus, a State-issued title to the land is not a condition precedent to recognize their ownership over the land. It is simply a symbol of ownership. What the law offers is merely a formal recognition of their titles over the territories identified and delineated under the law.[260]

Moreover, in *Alvarez v. PICOP Resources, Inc.*,[261] this Court held that indigenous peoples do not lose possession or occupation over the area even if it has been interrupted by causes such as voluntary dealings entered into by the government and private entities.

---

[257] Republic Act No. 8371 (1997), Section 3(1) provides:

Section 3. Definition of Terms. — For purposes of this Act, the following terms shall mean:

. . . . . .

1) Native Title — refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

[258] Separate Opinion of J. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 998 (2000) [Per Curiam, En Banc].

[259] Marvic Mario Victor F. Leonen, *The Indigenous Peoples' Rights Act: An Overview of Its Contents*, 4 PHILJA J. 53, 71 (2002).

[260] Republic Act No. 8371 (1997), sec. 11 provides:

Section 11. Recognition of Ancestral Domain Rights. — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

[261] 538 Phil. 348 (2006) [Per J. Chico-Nazario, First Division].

Flowing from their right of ownership, indigenous peoples likewise have the right to stay in the territories. Under the law, they will not be "relocated without their *free and prior informed consent*, nor through any means other than eminent domain."[262]

Requiring the indigenous peoples' free and prior informed consent is a safeguard to "ensure [their] genuine participation ... in decision-making" and to protect their rights in "plans, programs, projects, activities and other undertakings that will impact upon their ancestral domains"[263] — consistent with their inherent right to self-governance and self-determination and

---

[262] Republic Act No. 8371 (1997), sec. 7(c) provides:

Section 7. Rights to Ancestral Domains.—The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

. . . . . .

c) Right to Stay in the Territories. — The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

[263] National Commission on Indigenous Peoples Administrative Order No. 01-06, sec. 2(a) and 2(b) provides:

Section 2. Objectives. —

a. Ensure genuine participation of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) in decision-making through the exercise of their right to Free and Prior Informed Consent (FPIC), whenever applicable;

b. Protect the rights of ICCs/I Ps in the introduction and implementation of plans, programs, projects, activities and other undertakings that will impact upon their ancestral domains to ensure their economic, social and cultural well-being;

their free pursuit of economic, social, and cultural development.[264] As part of this self-governance, they have the right to participate in decision-making on matters that affect them, and the right to determine their priorities for development.[265]

Here, however, petitioners merely speculated that APECO would displace the Agtas and Dumagat communities from their ancestral lands. There was also no showing how their right to participate in decision-making was sidestepped. Again, without established factual basis, this Court cannot rule on the alleged violations.

Notably, the Agtas and Dumagat leaders have moved to withdraw as parties after being misled to sign the Petition in G.R. No. 198688.[266] They narrated how a campaign against APECO scared them into believing that they would be prevented from engaging in agriculture and fishing and that their daughters would be exploited once APECO is established.[267]

---

[264] Republic Act No. 8371 (1997), sec. 13 provides:

Section 13. Self-Governance. — The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

[265] Republic Act No. 8371 (1997), secs. 16 and 17 provide:

SECTION 16. Right to Participate in Decision-Making. — ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

SECTION 17. Right to Determine and Decide Priorities for Development. — The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

[266] *Rollo* (G.R. No. 198688), pp. 2316-2320.

[267] Id. at 2347-2348.

They stressed that contrary to these allegations, they were not displaced from their lands and that they have decided to coordinate with respondent APEZA to protect their lands and the surrounding natural resources. Moreover, they found that the livelihood and training opportunities brought by the APECO have improved their economic life.[268]

VII

The Constitution lays down the State policy on local autonomy under Article II, Section 25.[269] This is further enunciated in Article X, which envisions "a more responsive and accountable local government structure instituted through a system of decentralization."[270] Local government units are "given more powers, authority, responsibilities, and resources" to "enjoy genuine and meaningful local autonomy."[271]

---

[268] Id.

[269] CONST., art. II, sec. 25 provides:

Section 25. The State shall ensure the autonomy of local governments.

[270] CONST., art. X, sec. 3 provides:

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

[271] LOCAL GOVT. CODE, sec. 2(a) provides:

Section 2. Declaration of Policy. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

The intergovernmental relation between the national and local government means that "[n]ational agencies and offices with project implementation functions shall coordinate . . . with the local government units" and "shall ensure the participation of local government units both in the planning and implementation of said national projects."[272] Section 117 of the Local Government Code requires the concurrence of the local government units to the establishment of autonomous special economic zones.

Nevertheless, the requirement of prior consultations, or the lack of it, will not affect the validity of the law itself, but only its implementation.[273] As worded in the Local Government Code, "[n]o project or program shall be implemented . . . unless the consultations mentioned in Sections 2(c) and 26 . . . are complied with, and prior approval of the sanggunian concerned is obtained."[274] Thus, these deficiencies will not invalidate the laws.

Moreover, there is no legal basis for the claim that an economic zone is a political unit.

The Constitution and the Local Government Code expressly require a plebiscite to carry out any creation, division, merger, abolition or alteration of boundaries of a local government unit.[275]

---

[272] LOCAL GOVT. CODE, sec. 25(b) provides:

Section 25. National Supervision over Local Government Units. — (b) National agencies and offices with project implementation functions shall coordinate with one another and with the local government units concerned in the discharge of these functions. They shall ensure the participation of local government units both in the planning and implementation of said national projects.

[273] LOCAL GOVT. CODE, sec. 27.

[274] LOCAL GOVT. CODE, sec. 27.

[275] CONST., art. X, sec. 10 provides:

Section 10. No province, city, municipality or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

The "commencement, the termination, and the modification of local government units' corporate existence and territorial coverage"[276] would impact the local government's exercise of its functions,[277] resulting in material changes in the "political and economic rights of the local government units directly affected as well as the people therein."[278] For this reason, getting the consent of the affected people is required. In *Bagabuyo v. Commission on Elections*:[279]

> As a corporate entity with a distinct and separate juridical personality from the State, it exercises special functions for the sole benefit of its constituents. It acts as "an agency of the community in the administration of local affairs" and the mediums through which the people act in their corporate capacity on local concerns. In light of these roles, the Constitution saw it fit to expressly secure the consent of the people affected by the creation, division, merger, abolition or alteration of boundaries of local government units through a plebiscite.[280] (Citations omitted)

Local government units are "body politic and corporate" which are constituted by law and have substantial control of local affairs.[281] As the State's territorial and political subdivisions,[282]

LOCAL GOVT. CODE, sec. 6 provides:

Section 6. Authority to Create Local Government Units. — A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

[276] *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 693 (2008) [Per J. Brion, En Banc].

[277] Id.

[278] *Miranda v. Aguirre*, 373 Phil. 386, 400 (1999) [Per J. Puno, En Banc].

[279] 593 Phil. 678 (2008) [Per J. Brion, En Banc].

[280] Id. at 697-698.

[281] *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, 385 Phil. 586, 602 (2000) [Per J. Puno, First Division].

[282] *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 697 (2008) [Per J. Brion, En Banc].

local government units carry out the functions of the government.[283] Under the Local Government Code, they are delegated police power,[284] the power to tax,[285] and the power to legislate through their sanggunians.[286] Nevertheless, they are not an *imperium in imperio*; they are not sovereign within the State.[287] They remain under the president's supervision, coordinating with the national government on project implementations and financial and technical assistance.[288]

---

[283] Id.

[284] *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, 385 Phil. 586, 601 (2000) [Per J. Puno, First Division]; LOCAL GOVT. CODE, sec. 16 provides:

Section 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[285] LOCAL GOVT. CODE, sec. 129 provides:

Section 129. Power to Create Sources of Revenue. — Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.

[286] LOCAL GOVT. CODE, sec. 48 provides:

Section 48. Local Legislative Power. — Local legislative power shall be exercised by the sangguniang panlalawigan for the province; the sangguniang panlungsod for the city; the sangguniang bayan for the municipality; and the sangguniang barangay for the barangay.

[287] *Basco v. Philippine Amusements and Gaming Corp.*, 274 Phil. 323, 341 (1991) [Per J. Paras, En Banc].

[288] LOCAL GOVT. CODE, sec. 25(a) provides:

Here, petitioners argue that the creation of APECO abolished and altered the boundaries of the local government units concerned without a plebiscite. This argument is untenable.

APECO neither abolished nor altered the boundaries of Casiguran. The concern in the abolition or alteration of boundaries is the modification of the local government's corporate existence and territorial coverage. When APECO was established, the boundaries of Casiguran remained the same, because APECO is not a territorial and political subdivision. It did not alter the political and economic rights of the local governments concerned.

Notably, APECO is not involved in the administration of the local affairs. Compared to a local government unit, it does not possess the power to legislate. Its board is not composed of officials elected by the people. It does not have a taxing authority to generate resources for a certain locality. It does not deliver basic services to its constituents. Thus, APECO's creation does not require a plebiscite.

As to the issue of local taxation, we likewise reject petitioners' claim.

In *Tiu v. Court of Appeals*,[289] the validity of preferential tax treatment within areas covered by a special economic zone was upheld. In *Tiu*, the petitioners questioned the constitutionality of Executive Order No. 79-A for violating their right to equal protection of laws, as it limited the application of tax and duty incentives to business enterprises and residents within the fenced-in area of the Subic Special Economic Zone.[290]

Section 25. National Supervision over Local Government Units. — (a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.

The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to barangays.

[289] 361 Phil. 229 (1999) [Per J. Panganiban, En Banc].

[290] Id. at 238.

In upholding the validity of the executive order, this Court found no violation of the equal protection clause because there are "real and substantive distinctions between the circumstances obtaining inside and those outside the Subic Naval Base, thereby justifying a valid and reasonable classification."[291] This Court determined that the intent in creating the economic zone was to attract and encourage investors, and to that end, Congress deemed it necessary to apply preferential tax treatment within the economic zone. Thus:

> We believe it was reasonable for the President to have delimited the application of some incentives to the confines of the former Subic military base. It is this specific area which the government intends to transform and develop from its status quo ante as an abandoned naval facility into a self- sustaining industrial and commercial zone, particularly for big foreign and local investors to use as operational bases for their businesses and industries. Why the seeming bias for big investors? Undeniably, they are the ones who can pour huge investments to spur economic growth in the country and to generate employment opportunities for the Filipinos, the ultimate goals of the government for such conversion. The classification is, therefore, germane to the purposes of the law. And as the legal maxim goes, "The intent of a statute is the law."
>
> Certainly, there are substantial differences between the big investors who are being lured to establish and operate their industries in the so-called "secured area" and the present business operators outside the area. On the one hand, we are talking of billion-peso investments and thousands of new jobs. On the other hand, definitely none of such magnitude. In the first, the economic impact will be national; in the second, only local. Even more important, at this time the business activities outside the "secured area" are not likely to have any impact in achieving the purpose of the law, which is to turn the former military base to productive use for the benefit of the Philippine economy. There is, then, hardly any reasonable basis to extend to them the benefits and incentives accorded in RA 7227. Additionally, as the Court of Appeals pointed out, it will be easier to manage and monitor the activities within the "secured area," which is already fenced off, to prevent "fraudulent importation of merchandise" or smuggling.[292] (Citation omitted)

---

[291] Id. at 241.

[292] Id. at 243-244.

Hence, the preferential tax treatment within economic zones is a valid classification. It does not violate the local government's authority to tax.

Curiously, while petitioners raised several issues on local autonomy, the local councils and officials of the affected barangays and municipalities were not included as parties here. In any case, as respondents pointed out, factual queries such as whether there was consultation with the local government units must be settled first. Even the local council of Casiguran, which initially questioned the passage of the laws before the Senate, did not join the Petitions. The individuals and groups that could have established the circumstances surrounding the issues, and who should be claiming injury for the alleged violations, were not made parties here.

VIII

The non-impairment clause of the Constitution provides that "[n]o law impairing the obligation of contracts shall be passed."[293] This clause aims to protect the "integrity of contracts against unwarranted interference by the State."[294]

Impairment refers to "anything that diminishes the efficacy of the contract."[295] Thus, subsequent laws cannot tamper existing contracts by changing or modifying the parties' rights and obligations.[296] The non-impairment clause's application is limited "to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties."[297]

---

[293] CONST., art. III, sec. 10.

[294] *Goldenway Merchandising Corp. v. Equitable PCI Bank*, 706 Phil. 427, 437 (2013) [Per J. Villarama, Jr., First Division].

[295] Id. at 438.

[296] Id.

[297] *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue*, 660 Phil. 636, 655 (2011) [Per J. Peralta, En Banc].

However, the freedom to contract is not absolute. There are instances when the non-impairment clause must yield to the State's police power. In *Goldenway Merchandising Corporation v. Equitable PCI Bank*:[298]

> [A]ll contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity. Settled is the rule that the non-impairment clause of the Constitution must yield to the loftier purposes targeted by the Government. The right granted by this provision must submit to the demands and necessities of the State's power of regulation. Such authority to regulate businesses extends to the banking industry which, as this Court has time and again emphasized, is undeniably imbued with public interest.[299] (Citations omitted)

The non-impairment of contracts may be restricted by police power "in the interest of public health, safety, morals, and general welfare of the community"[300] as well as to afford protection to labor.[301]

Citing *Philippine Association of Service Exporters, Inc. v. Drilon*,[302] this Court in *JMM Promotion and Management, Inc. v. Court of Appeals*[303] held that the government cannot be precluded from enacting laws even if it results in impairing contracts. Thus:

---

[298] 706 Phil. 427 (2013) [Per J. Villarama, Jr., First Division].

[299] Id. at 440-441.

[300] *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, 612 Phil. 793, 815 (2009) [Per J. Carpio, En Banc].

[301] *Pryce Corp. v. China Banking Corp.*, 727 Phil. 1-27 (2014) [Per J. Leonen, En Banc].

[302] 246 Phil. 393 (1988) [Per J. Sarmiento, En Banc].

[303] 329 Phil. 87 (1996) [Per J. Kapunan, First Division].

Finally, it is a futile gesture on the part of petitioners to invoke the non-impairment clause of the Constitution to support their argument that the government cannot enact the assailed regulatory measures because they abridge the freedom to contract. In *Philippine Association of Service Exporters, Inc. vs. Drilon*, we held that "[t]he non-impairment clause of the Constitution . . . must yield to the loftier purposes targeted by the government." Equally important, into every contract is read provisions of existing law, and always, a reservation of the police power for so long as the agreement deals with a subject impressed with the public welfare.[304] (Citation omitted)

Here, petitioners claim that the creation of APECO violates their stewardship agreements with the government because it modifies the terms of these agreements.

Executive Order No. 263, series of 1995, adopted the community-based forest management. It recognizes the "indispensable role of local communities in forest protection, rehabilitation, development and management, and targets the protection, rehabilitation, management, and utilization of . . . forestlands, through the community-based forest management strategy[.]"[305] Through the program, certificates of stewardship contracts are awarded to individuals or families actually occupying or tilling portions of forest lands.[306] Community-

---

[304] Id. at 101.

[305] Executive Order No. 263 (1995), Community-Based Forest Management Strategy (CBFMS).

[306] DENR Administrative Order No. 96-29 (1996), art. IV, sec. 1 (b) provides:

Section 1. Tenurial Instruments. The following tenurial instruments shall be issued to qualified participants:

. . . . . .

(b) Certificate of Stewardship Contract (CSC). The CSC, which has a duration of twenty-five (25) years renewable for another twenty-five (25) years, shall be awarded to individuals or families actually occupying or tilling portions of forest lands pursuant to LOI 1260. In the case of married people, the CSC shall be awarded in the name of the couple. The CSC shall, henceforth, be issued only within established CBFM project areas, subject to the allocation and endorsement of the PO.

based forest management agreements are entered into with people's organizations, where the community enjoys the "benefits of sustainable utilization, management and conservation of forestlands and natural resources therein."[307]

The State's exercise of police power is superior to the non-impairment of contracts. Here, the establishment of APECO is in line with its policy of spurring industrial, economic, and social development along the rural areas in the country. Notably, the reservation of the State's exercise of police power is clearly provided in the Executive Order. In instances that the contracts must be pre-terminated, grantees are entitled to compensation.[308]

---

[307] DENR Administrative Order No. 96-29 (1996), art. IV, sec. 1 (a) provides:

Section 1. Tenurial Instruments. The following tenurial instruments shall be issued to qualified participants:

(a) Community Based Forest Management Agreement (CBFMA). CBFMAs are agreements between the DENR and the participating People's Organizations. The CBFMA, which has a duration of twenty-five (25) years renewable for another twenty-five (25) years, shall provide tenurial security and incentives to develop, utilize and manage specific portions of forest lands pursuant to approved CRMFs. The CBFMA is a production sharing agreement which is designed to ensure that the participating community shall enjoy the benefits of sustainable utilization, management and conservation of forestlands and natural resources therein. The government shall share in these benefits in the form of increased natural resource protection and rehabilitation, forest charges, fees and/or taxes as determined and agreed upon.

[308] Implementing Rules and Regulations of Executive Order No. 263 (1996), art. IV, sec. 2, par. 5 provides: When, on account of public interest, welfare, safety or public order, and not due to the fault or negligence of the CSC or CBFMA holder, the DENR is obliged to pre-terminate the agreement, the participants shall be entitled to compensation on all improvements made in the CBFMA area, based on the fair market value of such improvements as assessed by a government assessor or disinterested party and qualified third party as of date of cancellation, minus all charges and obligations, if any, accruing to the government. In addition, affected participants shall have the right to harvest or remove such improvements as can reasonably be removed consistent with applicable policies, the value of which shall be deducted from the final compensation.

In any case, none of the petitioners who claimed to be awardees of stewardship agreements showed how their contracts were undermined by the establishment of APECO. To support their conclusion that these agreements were violated, there must be proof that they were displaced or prevented from tilling the forest lands. None was present here.

IX

The allegations on the violation on rules concerning foreign loans and foreign investment are likewise untenable.

The president is allowed to contract and guarantee foreign loans, and the Constitution does not distinguish as to the kind of loans or debt instruments that it covers.[309] The president shares this authority with the Central Bank. Article XII, Section 20 of the Constitution, which amends its counterpart in the 1973 Constitution, now provides that majority of the members of the Monetary Board shall come from the private sector to maintain its independence.[310]

---

[309] *See Spouses Constantino v. Cuisia*, 509 Phil. 486 (2005) [Per J. Tinga, En Banc]. *See also* CONST., art. VII, sec. 20, which provides:

Section 20. The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decision on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

CONST., art. XII, sec. 21 provides:

Section 21. Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public.

[310] *See Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 572 Phil. 554 (2008) [Per J. Leonardo-De Castro, En Banc].

In *Spouses Constantino v. Cuisia*,[311] this Court ruled that the president may validly delegate the power to contract foreign loans under the doctrine of qualified political agency. The Constitution sanctions such delegation to the Secretary of Finance, as the president's alter ego, provided that the contracting of loan is subject to the president's approval. Thus:

> If, as petitioners would have it, the President were to personally exercise every aspect of the foreign borrowing power, he/she would have to pause from running the country long enough to focus on a welter of time-consuming detailed activities — the propriety of incurring/guaranteeing loans, studying and choosing among the many methods that may be taken toward this end, meeting countless times with creditor representatives to negotiate, obtaining the concurrence of the Monetary Board, explaining and defending the negotiated deal to the public, and more often than not, flying to the agreed place of execution to sign the documents. This sort of constitutional interpretation would negate the very existence of cabinet positions and the respective expertise which the holders thereof are accorded and would unduly hamper the President's effectivity in running the government.
>
> . . . . . .
>
> *We cannot conclude that the power of the President to contract or guarantee foreign debts falls within the same exceptional class. Indubitably, the decision to contract or guarantee foreign debts is of vital public interest, but only akin to any contractual obligation undertaken by the sovereign, which arises not from any extraordinary incident, but from the established functions of governance.*
>
> *Another important qualification must be made. The Secretary of Finance or any designated alter ego of the President is bound to secure the latter's prior consent to or subsequent ratification of his acts. In the matter of contracting or guaranteeing foreign loans, the repudiation by the President of the very acts performed in this regard by the alter ego will definitely have binding effect....*

With constitutional parameters already established, we may also note, as a source of suppletory guidance, the provisions of R.A. No. 245. The afore-quoted Section 1 thereof empowers the Secretary of Finance with the approval of the President and after consultation of

---

[311] 509 Phil. 486 (2005) [Per J. Tinga, En Banc].

the Monetary Board, "to borrow from time to time on the credit of the Republic of the Philippines such sum or sums as in his judgment may be necessary, and to issue therefor evidences of indebtedness of the Philippine Government." Ineluctably then, while the President wields the borrowing power it is the Secretary of Finance who normally carries out its thrusts.[312] (Emphasis supplied, citation omitted)

Here, petitioners point out that respondent APEZA may borrow funds from foreign sources to finance projects without the concurrence from the Monetary Board.[313] On the other hand, respondents assert that Congress may confer upon other government entities the authority to contract foreign loans.[314] The only instance when concurrence from the Monetary Board is required is when the foreign loan is contracted by the president.[315]

Section 12(g) of Republic Act No. 9490 complies with the constitutional and legal requirements on contracting foreign loans. It states:

(g) *Subject to the approval of the President of the Philippines and the Monetary Board of the Bangko Sentral ng Pilipinas and upon the recommendation of the Department of Finance*, to raise or borrow adequate and necessary funds from local or foreign sources to finance its projects and programs under this Act, and for that purpose to issue bonds, promissory notes, and other forms of securities, and to secure the same by a guarantee, pledge, mortgage, deed of trust, or an assignment of all or part of its property or assets[.] (Emphasis supplied)

---

[312] Id. at 516-519.

[313] *Rollo* (G.R. No. 198688), pp. 1447-1448, citing CONST., art. XII, sec. 21 which provides:

Section 21. Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public.

[314] Id. at 1753.

[315] Id. at 1754.

It is clear that the borrowing of foreign loan for APECO is subject to the approval of the president and the Monetary Board, and upon the Department of Finance's recommendation. This provision cannot be interpreted to mean that respondent APEZA can, on its own, contract foreign loans and other indebtedness. The safeguards found in the Constitution and the Special Economic Zone Act[316] are present in the provision.

Reading the constitutional provisions, Congress has no part in contracting the foreign loan except to limit and regulate how the loans may be contracted. It cannot expand the constitutional provision and determine who may exercise this power. Hence, APECO cannot contract foreign loans on its own. Whatever financial indebtedness it incurs is the government's.

Other contentions such as the APEZA being a super body and a money machine for a single political family, as well as APECO being a failed project, deserve scant consideration.[317] These credulous arguments are not only factually baseless, but are legally untenable. There is simply no cause of action arising from these suspicions.

In fine, this Court is constrained to dismiss the Petitions for raising questions that call for a factual determination. When the resolution of issues is inextricably intertwined with underlying questions of fact, this Court will refuse to take cognizance of the petition, its invocation of compelling reasons notwithstanding.

---

[316] Rep. Act No. 7916 (1995), sec. 27 provides:

SECTION 27. Applicability of Banking Laws and Regulations. — Existing banking laws and Bangko Sentral ng Pilipinas (BSP) rules and regulations shall apply to banks and financial institutions to be established in the ECOZONE and to other ECOZONE-registered enterprises. Among other pertinent regulations, these include those governing foreign exchange and other current account transactions (trade and non-trade), local and foreign borrowings, foreign investments, establishment and operation of local and foreign banks, foreign currency deposit units, offshore banking units and other financial institutions under the supervision of the BSP.

[317] *Rollo* (G.R. No. 208282), pp. 69-70.

Petitioners could have benefited from observing our procedural rules and following our judicial structure. They should have brought the challenge before a tribunal equipped to receive and assess evidence at the first instance.

Judicial restraint calls for deliberate caution. This Court cannot speculate on the facts and project hypothetical situations in cases where parties failed to fully argue and develop their cases. Otherwise, we may be traversing a dangerous path by imagining facts which may not be at all true.

Parties must develop their case by carefully laying down all the necessary facts that will enable the courts to sufficiently resolve the case. Approaching the courts requires not only passion and concern for sectoral issues, but legal competence to make a case that will stand judicial scrutiny. Unfortunately, the Petitions here failed to do so.

WHEREFORE, the Petitions are **DISMISSED**.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, Lazaro-Javier, and *Delos Santos, JJ.*, on official leave.

EN BANC

[G.R. No. 218870. November 24, 2020]

The COMMISSION ON AUDIT, ATTY. ELEANOR V. ECHANO, FELIZARDO B. TOQUERO, JR., TITA B. EMBESTRO, SUSIE S. LAUREANO, JOHANSON V. DISUANCO, and ADELA A. TABUZO, *Petitioners, v.* **HON. ERWIN VIRGILIO R. FERRER, Acting Presiding Judge of the Regional Trial Court, Branch 33, Pili, Camarines Sur, and LUIS RAYMUND F. VILLAFUERTE, JR., former Governor of Camarines Sur,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); JURISDICTION; DISALLOWANCE OF GOVERNMENT EXPENDITURES; THE COA HAS PRIMARY JURISDICTION OVER ISSUES INVOLVING DISALLOWANCES OF GOVERNMENT EXPENDITURES.— The matter of allowing or disallowing the requests for payment is within the primary power of COA to decide.

. . .

. . . [T]he Constitution and law bestow primary jurisdiction on the examination and audit of government accounts to the COA. As one of the three (3) independent constitutional commissions, COA has the power to define the scope of its audit and examination, and to establish the techniques and methods required therefor. It also has the power to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

In *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, this Court ruled that when the issue involves compliance with applicable auditing laws and rules on procurement, such matters are not within the usual area of knowledge, experience and

expertise of most judges but within the special competence of COA auditors and accountants.

In this case, private respondent is questioning the disallowances of various expenditures of the provincial government for violations of procurement and auditing rules. Thus, the COA has primary authority to review whether such disallowances were lawful and in accordance with their rules. Given COA's primary jurisdiction on the matter, case law posits that the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.

2. ID.; ID.; ID.; ID.; ID.; TRIAL COURTS HAVE NO AUTHORITY TO DETERMINE QUESTIONS ON COA'S GRAVE ABUSE OF DISCRETION.— Jurisprudence has interpreted [Section 7 of Article IX of the 1987 Constitution] as a manifestation to grant the COA broad authority to decide on specialized matters delegated to them. . . . [T]he 1987 Constitution limits this Court's authority to review decisions of the Constitutional Commissions only to instances of grave abuse of discretion amounting to patent and substantial denial of due process.

Guided by such precept, this Court cannot uphold private respondent's resort to the RTC. There is nothing in law or jurisprudence that grants it the authority to directly determine questions on COA's grave abuse of discretion.

Allowing trial courts to issue writs of *certiorari* against NDs issued by provincial or district auditors concurrently with this Court would cause unnecessary delay in the audit process, thereby weakening the authority of the COA. Auditors would be preoccupied with defending their findings before the courts instead of having the time and opportunity to review, amend, or reverse their findings within the Commission. As correctly noted by the OSG, it would encourage public officials to stall or evade COA's enforcement mechanisms by filing petitions in the trial courts. It would also unduly burden Our already saturated trial court dockets.

3. ID.; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; COURTS ARE PROHIBITED FROM

RESOLVING A CONTROVERSY WITHIN THE EXPERTISE OF AN ADMINISTRATIVE TRIBUNAL PRIOR TO THE RESOLUTION OF THAT CONTROVERSY BY SUCH TRIBUNAL.— The principle of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction. Courts cannot or will not determine a controversy involving a question within the jurisdiction of an administrative tribunal prior to the resolution of that question by that administrative tribunal, where the question demands the exercise of sound discretion requiring its special knowledge, experience, and services to determine technical and intricate matters of fact. The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.

4. ID.; ID.; ID.; EXCEPTIONS TO THE DOCTRINE OF PRIMARY JURISDICTION.— [T]he circumstances of the case do not qualify as one of the exceptions to the general rule on COA's primary jurisdiction over money claims against the government, *viz*: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) **when strong public interest is involved**; and, (l) in quo warranto proceedings.

5. ID.; ID.; EXPENDITURES OF LOCAL GOVERNMENT UNITS; NOTICE OF DISALLOWANCE; THE

DETERMINATION OF THE LIABILITY TO RETURN THE DISALLOWED AMOUNT IS NOT PURELY A LEGAL ISSUE, BUT ALSO REQUIRES DETERMINATION OF THE PARTIES' GOOD FAITH.— Neither is this Court convinced of the RTC's ratiocination that the issue on private respondent's personal liability is purely a legal issue best to be determined in a full-blown trial. In *Madera v. COA*, determination of liability to return the disallowed amounts is not purely a legal issue, but would also require determination of good faith of the parties. Good faith, or the lack of it, is a question of intention. In ascertaining intention, courts are necessarily controlled by the evidence as to the conduct and outward facts by which alone the inward motive may, with safety, be determined.

6. ID.; ID.; ID.; ID.; GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445); THE FAILURE OF A PARTY TO APPEAL TO COA COMMISSION PROPER WITHIN THE REGLEMENTARY PERIOD RENDERS A NOTICE OF DISALLOWANCE FINAL AND EXECUTORY.— This Court, likewise, notes that private respondent is seeking to modify an already final and executory disallowance by COA's provincial government auditors. Section 48 of Presidential Decree No. (PD) 1445 lays down the procedure to appeal notices of disallowance issued by agency auditors, *viz*:

> *Appeal from decision of auditors*. –– Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may **within six months** from receipt of a copy of the decision appeal in writing to the **Commission**.

During this stage of the proceedings, the concerned government agency or official has the opportunity to prove the validity of the expense or disbursement. If the appeal is denied, a petition for review may be filed before the COA Commission Proper. Should the same result in an adverse ruling, the aggrieved party may file a petition for *certiorari* before this Court to assail the decision of the COA Commission Proper.

In this case, private respondent admits that he failed to file the appeal within the reglementary period set forth under Section 48 of PD 1445. He claims, however, that he may still seek relief from the courts.

Private respondent is mistaken. He should have explained the supposed propriety of the provincial government's disbursements in an appeal before the COA Commission Proper within the reglementary period. His failure to comply with the requirements of Section 48 of PD 1445 rendered the provincial auditor's notices of disallowances final and executory.

7. ID.; ID.; ID.; ID.; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; COURTS MAY NO LONGER ALTER NOTICES OF DISALLOWANCE THAT HAVE BECOME FINAL AND EXECUTORY.— Given that the disallowances have become final and executory, the RTC could no longer alter the same. It should have dismissed private respondent's petitions.

The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Epifanio Ma. J. Terbio, Jr. for Villafuerte, Jr.

D E C I S I O N

ZALAMEDA, *J.*:

This jurisdiction acknowledges and respects the full authority given by the 1987 Constitution to the Commission on Audit (COA), as guardian of public funds, to make a determination on issues pertaining to audit of government accounts. Hence, the COA should be allowed to make a full disposition of specialized matters within its authority to decide. Settled is the rule that before party may seek the intervention of the court, he or she should first avail of all the means afforded him by administrative processes.

The Case

Before this Court is a Petition for *Certiorari* and Prohibition[1] assailing the 18 December 2014[2] and 06 May 2015[3] Orders of Branch 33, Regional Trial Court (RTC) of Pili, Camarines Sur in Special Civil Action Nos. P-155-2014 & P-156-2014 entitled, *Luis Raymund F Villafuerte, Jr. v. Atty. Eleanor V. Echano, et al.* The RTC denied the motion to dismiss[4] of the provincial auditors, petitioners Atty. Eleanor V. Echano (Echano), Felizardo B. Toquero, Jr. (Toquero), Tita B. Embestro (Embestro), Susie S. Laureano (Laureano), Johanson V. Disuanco, and Adela A. Tabuzo (collectively, petitioners) against the petitions for *certiorari* and prohibition with prayer for TRO and/or preliminary injunction[5] filed by private respondent Luis Raymund F. Villafuerte (private respondent).

Antecedents

During his term as Governor of the Province of Camarines Sur, private respondent approved several disbursements for the years 2006 to 2010 for various activities and projects of the provincial government.[6]

Upon audit, the COA found several deficiencies, including non-compliance with Republic Act No. (RA) 9184, or the *Government Procurement Act*, and unnecessary expenditures under 29 October 2012 COA Circular No. 2012-003.[7] Specifically, the audit uncovered the following:

---

[1] *Rollo*, pp. 3-44.

[2] *Id.* at 62-63.

[3] *Id.* at 64.

[4] *Id.* at 65-84.

[5] *Id.* at 246-258.

[6] *Id.* at 3-44.

[7] Updated Guidelines for the Prevention and Disallowance of Irregular, Unnecessary, Excessive, Extravagant and Unconscionable Expenditures.

ND No./Date	*Transaction*	*Amount (Php)*
2012-100-024 (2009)[8] 12 November 2012	Engagement of the services of Lichauco Guilas and Villanueva Architectural Firm for the preparation of the Conceptual Design Development and Full architectural and Engineering Construction drawing for the proposed commercial development of Capitol Complex, Cadlan, Pili, Camarines Sur and the site engineering and full agricultural design for Hunungan, Resort, Caramoan, Camarines Sur, for the total amount of Php1,743,000.	Php1,743,000.00
2012-100-25 (2009)[9] 12 November 2012	Engagement of the services of Post Ad Ventures, Inc. and/or Monique Lopez for the promotion of the 2009 World Wakeboarding Championship	Php11,522,497.69
2012-100-026 (09)[10] 09 November 2012	Engagement of Tigon Security Investigation and General Services for security services	Php6,312,354.78
2012-100-037 (2010)[11] 06 November 2012	Reimbursement/replenishment of the petty cash fund for various expenses in the Villas, Camarines Sur Water Sports Complex, and in Gota, Camarines Sur for the period of 27-28 April 2010	Php1,085,221.41
2012-100-040 (08)[12] 05 December 2012	15% mobilization fee paid to Bimbo Construction and supply for the road concreting of Namurabod and Divino Rostro roads, Buhi, Camarines Sur.	Php145,337.85

[8] *Rollo*, pp. 85-86.

[9] *Id.* at 87-88.

[10] *Id.* at 89-90.

[11] *Id.* at 91-92.

[12] *Id.* at 93-94.

2012-100-039 (09)[13] 05 December 2012	Payment for the procurement of supply and materials for the construction of a Bed and Breakfast Building at Del Gallego, Camarines Sur	Php1,754,937.79
2012-100-041 (07)[14] 06 December 2012	15% mobilization fee for the construction of two (2) classroom, two (2) storey building at Ponong Elementary school, Magarao, Camarines Sur	Php217,452.95
2012-100-042 (06)[15] 06 December 2012	15% mobilization fee for the construction of two (2) classroom school building at Sogod Topas Elementary School, Nabua, Camarines Sur	Php141,366.99
2012-100-043 (07)[16] 06 December 2012	15% mobilization fee for the construction of two (2) classroom, two (2) storey school building at Romero Elementary school at Pawili, Bula, Camarines Sur	Php218,181.75
2012-100-044 (08)[17] 26 December 2012	15% mobilization fee for the construction of various infrastructure projects in Garchitorena, Camarines Sur (streetlights at Brgy. IV; Day Care Center at Harrison, Extension of Villafuerte Road at Denrica, and construction of Solar Dryer at Salvacion)	Php267,708.16

[13] *Id.* at 95-96.

[14] *Id.* at 102-103.

[15] *Id.* at 109-110.

[16] *Id.* at 114-115.

[17] *Id.* at 121-122.

As a result, the COA, through Echano and Embestro, the COA Audit Team Leader (ATL) and Supervising Auditor (SA) for the Province of Camarines Sur, issued ten (10) Notices of Disallowance (NDs) on the provincial government's disbursements for the foregoing transactions. Private respondent, however, did not question the NDs before the COA. Thus, Notices of Finality of Decision (NFDs) were issued by Tuquero and Laureano, who succeeded Echano and Embestro as provincial ATL and SA, respectively.

On 15 October 2014, private respondent filed two (2) petitions for *certiorari* and prohibition, docketed as Special Civil Action Nos. P-155-2014 and P-156-2014[18] and raffled to Branch 33, RTC of Pili, Camarines Sur, then presided by Judge Marvel C. Clavecilla, assailing the NFDs issued by petitioners and seeking injunctive relief against the COA's orders of execution implementing the NDs.

The RTC subsequently issued a 72-hour temporary restraining order (TRO) on 20 October 2014, and set a summary hearing on 23 October 2014 for the possible extension of the TRO.[19] The TRO was subsequently extended on 23 October 2014 for another 17 days, or until 09 November 2014. It also set the hearing on the application for the issuance of a preliminary injunction on 07 November 2014.[20]

Petitioners, through the Office of the Solicitor General (OSG), opposed the prayer for a writ of injunction on the following grounds: 1) the RTC has no jurisdiction over the subject matter of the petitions; 2) the NDs have already become final and executory pursuant to Presidential Decree (PD) No. 1445, or the Government Auditing Code of the Philippines, and the 2009 Revised Rules of Procedure of the COA; 3) respondents have failed to exhaust administrative remedies, a condition precedent for the filing of the petitions; and 4) the requisites for the issuance

---

[18] *Id.* at 246-258.

[19] *Id.* at 13.

[20] *Id.*

of the writ are not present.[21] Nonetheless, the RTC, in a 07 November 2014 Order, issued a writ of preliminary injunction enjoining petitioners from implementing any writ of execution pursuant to the NDs.[22]

On 17 November 2014, petitioners moved to dismiss[23] the two (2) petitions on the ground of lack of jurisdiction and failure to exhaust administrative remedies. The RTC denied the motion in its 18 December 2014 Order.[24] Citing Section 4, Rule XII of the 2009 Revised Rules of Procedure of the COA, it ruled that only decisions, rulings, or resolutions of the commission proper can be brought to the Supreme Court via petition for *certiorari*.[25] The RTC also affirmed its jurisdiction over private respondent's petitions despite the non-exhaustion of administrative remedies since they raise a purely legal question, *i.e.*, private respondent's personal liability on the NDs.[26]

Petitioners filed a motion for reconsideration assailing the 18 December 2014 Order[27] which private respondent opposed. On 13 February 2015, petitioners filed their Consolidated Comment *Ex Abundanti Ad Cautelam*.[28] On 06 May 2015, the RTC, through Acting Presiding Judge Virgilio P. Ferrer, denied petitioners' motion for reconsideration, and set the case for pre-trial conference.[29]

Petitioners are now before this Court assailing the RTC's Orders.

---

[21] *Id.* at 14.

[22] *Id.* at 14.

[23] *Id.* at 65-82.

[24] *Supra* at note 2.

[25] *Rollo*, p. 63.

[26] *Id.* at 63.

[27] *Id.* at 15.

[28] *Id.* at 306-358.

[29] *Supra* at note 3.

Petitioners' Arguments

Petitioners raise the following grounds in support of the petition:

I

PUBLIC RESPONDENT COMMITTED A SERIOUS JURISDICTIONAL ERROR IN TAKING COGNIZANCE OF THE PETITIONS BEFORE THE RTC NOTWITHSTANDING ITS LACK OF JURISDICTION OVER THE SUBJECT MATTER THEREIN.

II

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE PETITIONS BEFORE THE RTC DESPITE PRIVATE RESPONDENT'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE THE COMMISSION ON AUDIT.

Petitioners maintain that private respondent should have appealed the decisions of the provincial auditors to the COA Commission Proper, and his failure to assail the same renders the NDs final and executory.[30] They further assert that the RTC had no jurisdiction over private respondent's petitions for failure to exhaust administrative remedies.[31] Moreover, the petitions raised purely questions of law. Under the Constitution and PD No. 1445, judicial relief should be specifically sought by petition for *certiorari* with the Supreme Court, and not with the RTC, within 30 days from receipt.[32]

In support of their prayer to enjoin the proceedings before the RTC, petitioners argue that it will suffer grave and irreparable injury if Spec. Civil Action Nos. P-155-2014 & P-156-2014 are to continue since it would not be able to recover public funds in the amount of Php23,408,059.37. Further, they alleged that continuation of the proceedings before the RTC would embolden unscrupulous officials to evade COA's enforcement

---

[30] *Rollo*, pp. 19-26.

[31] *Id.* at 31-38.

[32] *Id.* at 34.

mechanisms by simply filing petitions for *certiorari* and prohibition with trial courts.[33]

Private Respondent's Arguments

Private respondent argues that judicial recourse to the RTC was proper because he is not assailing the ruling of the COA Commission Proper, but merely the ruling of its provincial auditors. He alleges that a petition for *certiorari* under Rule 64 is proper only when the assailed decision, order, or resolution comes from the COA Commission Proper.[34] He contends that petitioners failed to establish that the RTC committed grave abuse of discretion.

Further, private respondent asseverates that adopting petitioners' argument would deprive him of legal recourse to the courts.[35] While he concedes that a petition for *certiorari* is not a substitute for a lost appeal, he claims that the instant case should be treated as an exception. Further, he will suffer grave and irreparable injury in case of an adverse decision as he would be made to reimburse for expenses which benefited the government. Thus, it would be in the broader interest of justice to allow him to file the case with the RTC.[36]

According to private respondent, his petitions before the RTC are meritorious. The mobilization fees paid by the provincial governments to various contractors were valid.[37] That these contractors subsequently failed to complete the infrastructure projects should not make the provincial government officials personally liable since the payments to the contractors were made in accordance with law and on the basis of the contract.[38]

---

[33] *Id.* at 38-41.

[34] *Id.* at 548.

[35] *Id.* at 549.

[36] *Id.* at 550.

[37] *Id.* at 551.

[38] *Id.* at 552.

Lastly, private respondent claims the COA auditors acted with manifest partiality and bias, and have failed to show that he was ill-motivated in authorizing the various disbursements, or that he personally profited from the said transactions.[39]

Issue

Prescinding from the issues raised by the parties, this Court is tasked to determine whether the RTC committed grave abuse of discretion when it denied petitioners' motion to dismiss the petitions for *certiorari* and prohibition filed by private respondent. The resolution of the issue, in turn, hinges on a determination of the propriety of private respondent's recourse to the RTC to assail the provincial auditor's NDs.

Ruling of the Court

We grant the petition.

COA has primary jurisdiction over issues involving disallowances

The principle of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction.[40] Courts cannot or will not determine a controversy involving a question within the jurisdiction of an administrative tribunal prior to the resolution of that question by that administrative tribunal, where the question demands the exercise of sound discretion requiring its special knowledge, experience, and services to determine technical and intricate matters of fact.[41] The objective of the doctrine of primary

---

[39] *Id.* at 553.

[40] *Province of Aklan v. Jody King Construction and Development Corp.*, G.R. Nos. 197592 & 202623, 27 November 2013, 722 Phil. 315 (2013) [Per J. Villarama].

[41] *Republic v. Lacap*, G.R. No. 158253, 02 March 2007, 546 Phil. 87 (2007) [Per J. Austria-Martinez].

jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[42]

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law.[43] The matter of allowing or disallowing the requests for payment is within the primary power of COA to decide.[44]

Article IX of the 1987 Constitution is clear:

D. *The Commission on Audit*

SECTION 1. (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners x x x.

SECTION 2. (1) The Commission on Audit shall have the power, authority, and **duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government**, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve

---

[42] *Province of Aklan v. Jody King Construction and Development Corp., supra*.

[43] *Tourism Infrastructure and Enterprise Zone Authority v. Global-V Builders Co.*, G.R. No. 219708, 03 October 2018 [Per J. Peralta].

[44] *Id.*

the vouchers and other supporting papers pertaining thereto. (Emphasis ours)

Likewise, under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445, it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities.

Section 26. *General jurisdiction*. — The authority and powers of the Commission shall extend to and comprehend **all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government**, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and **settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities**. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis ours)

Verily, the Constitution and law bestow primary jurisdiction on the examination and audit of government accounts to the COA. As one of the three (3) independent constitutional commissions, COA has the power to define the scope of its audit and examination, and to establish the techniques and methods required therefor. It also has the power to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.[45]

---

[45] *Corales v. Republic*, G.R. No. 186613, 27 August 2013, 716 Phil. 432 (2013) [Per J. Perez].

In *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*,[46] this Court ruled that when the issue involves compliance with applicable auditing laws and rules on procurement, such matters are not within the usual area of knowledge, experience and expertise of most judges but within the special competence of COA auditors and accountants.

In this case, private respondent is questioning the disallowances of various expenditures of the provincial government for violations of procurement and auditing rules. Thus, the COA has primary authority to review whether such disallowances were lawful and in accordance with their rules. Given COA's primary jurisdiction on the matter, case law[47] posits that the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.

The authority to conduct a limited judicial review of acts, decisions or resolutions of the COA is only vested by law to this Court

Private respondent committed a procedural blunder by raising COA's supposed grave abuse of discretion with the RTC. Section 7 of Article IX of the 1987 Constitution is clear:

> ARTICLE IX
> Constitutional Commissions
>
> A. Common Provisions
>
> x x x x x x x x x
>
> SECTION 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A

---

[46] G.R. No. 148106, 17 July 2006, 527 Phil. 623 (2006) [Per J. Corona].

[47] *Park Developers, Inc. v. Daclan*, G.R. No. 211301, 27 November 2019. [Per J. Inting]; *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas, id.*

case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof**. (Emphasis supplied)

Jurisprudence[48] has interpreted this Constitutional provision as a manifestation to grant the COA broad authority to decide on specialized matters delegated to them. Compared to the phraseology in the 1935 Constitution granting this Court full and broad review authority, the 1987 Constitution limits this Court's authority to review decisions of the Constitutional Commissions only to instances of grave abuse of discretion amounting to patent and substantial denial of due process.

Guided by such precept, this Court cannot uphold private respondent's resort to the RTC. There is nothing in law or jurisprudence that grants it the authority to directly determine questions on COA's grave abuse of discretion.

Allowing trial courts to issue writs of *certiorari* against NDs issued by provincial or district auditors concurrently with this Court would cause unnecessary delay in the audit process, thereby weakening the authority of the COA. Auditors would be preoccupied with defending their findings before the courts instead of having the time and opportunity to review, amend, or reverse their findings within the Commission. As correctly noted by the OSG, it would encourage public officials to stall or evade COA's enforcement mechanisms by filing petitions in the trial courts. It would also unduly burden Our already saturated trial court dockets.

---

[48] *See Aratuc v. Commission on Elections*, G.R. Nos. L-49705-09, 08 February 1979, 177 Phil. 205 (1979) [Per J. Barredo]; *Dario v. Mison*, G.R. Nos. 81954, 8196, 85335, 86241, 08 August 1989, 257 Phil. 84 (1989) [Per J. Sarmiento]; *Oriondo v. COA*, G.R. No. 211293, 04 June 2019 [Per J. Leonen].

The exceptions to the rule on primary jurisdiction do not apply in the case at bar

To be sure, this Court, in certain instances, has recognized exceptions to the rules. However, this is done only for the most compelling reasons, where strict adherence to the rules would defeat rather than serve the ends of justice.[49] A liberal construction of the rules requires, at least, an explanation on why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction.

In this case, the records are bereft of any explanation for private respondent's failure to question the disallowances before the COA Commission Proper. He merely insists on the availability of judicial relief with the RTC after the lapse of the reglementary period. Certainly, this Court cannot countenance private respondent's absurd interpretation of the rules without transgressing settled principles in administrative and procedural law. To allow litigants to bypass quasi-judicial bodies, and in this case, a constitutional commission, would not only be a gross disrespect to their mandate, but also unduly subject courts to further clogging of dockets.

In any event, the circumstances of the case do not qualify as one of the exceptions to the general rule on COA's primary jurisdiction over money claims against the government, *viz.*: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the

[49] *Id.*

controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) **when strong public interest is involved**;[50] and, (l) in *quo warranto* proceedings.

Private respondent cites public welfare, advancement of public policy, and broader interests of justice to justify his recourse to the RTC. However, he miserably failed to establish how a belated judicial review of the NDs would advance the interests of public policy and/or justice.

Neither is this Court convinced of the RTC's ratiocination that the issue on private respondent's personal liability is purely a legal issue best to be determined in a full-blown trial.[51] In *Madera v. COA*,[52] determination of liability to return the disallowed amounts is not purely a legal issue, but would also require determination of good faith of the parties. Good faith, or the lack of it, is a question of intention. In ascertaining intention, courts are necessarily controlled by the evidence as to the conduct and outward facts by which alone the inward motive may, with safety, be determined.[53]

It is true that in the past, this Court upheld the courts' jurisdiction over money claims against the government if they involve interpretation of the Constitution,[54] determination of contractual rights and obligations,[55] or if there was unreasonable delay and official inaction on the part of COA.[56] However, private

---

[50] Emphasis ours.

[51] *Rollo*, p. 63.

[52] G.R. No. 244128, 08 September 2020 [Per J. Caguioa].

[53] *Philippine National Bank v. Vila*, G.R. No. 213241, 01 August 2016, 792 Phil. 86 (2016) [Per J. Perez].

[54] *Parreño v. COA*, G.R. No. 162224, 07 June 2007, 551 Phil. 368 (2007) [Per J. Carpio].

[55] *Republic v. Lacap*, G.R. No. 158253, 02 March 2007, 546 Phil. 87 (2007) [Per J. Austria-Martinez].

[56] *Vigilar v. Aquino*, G.R. No. 180388, 18 January 2011, 654 Phil. 755 (2011) [Per J. Sereno].

respondent's petitions did not raise the same issues and merely dwelt on the supposed impropriety of the NDs.

The assailed NDs have become final and executory

This Court, likewise, notes that private respondent is seeking to modify an already final and executory disallowance by COA's provincial government auditors. Section 48 of Presidential Decree No. (PD) 1445[57] lays down the procedure to appeal notices of disallowance issued by agency auditors, *viz.*:

> *Appeal from decision of auditors*. — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may **within six months** from receipt of a copy of the decision appeal in writing to the **Commission**. (Emphasis supplied)

During this stage of the proceedings, the concerned government agency or official has the opportunity to prove the validity of the expense or disbursement. If the appeal is denied, a petition for review may be filed before the COA Commission Proper. Should the same result in an adverse ruling, the aggrieved party may file a petition for *certiorari* before this Court to assail the decision of the COA Commission Proper.[58]

In this case, private respondent admits that he failed to file the appeal within the reglementary period set forth under Section 48 of PD 1445.[59] He claims, however, that he may still seek relief from the courts.

Private respondent is mistaken. He should have explained the supposed propriety of the provincial government's disbursements in an appeal before the COA Commission Proper within the reglementary period. His failure to comply with the

---

[57] Government Auditing Code of the Philippines.

[58] *Maritime Industry Authority v. Commission on Audit*, G.R. No. 185812, 13 January 2015, 750 Phil. 288 (2015) [Per J. Leonen].

[59] *Rollo*, p. 548.

requirements of Section 48 of PD 1445 rendered the provincial auditor's notices of disallowances final and executory.[60]

The NDs subject of this petition were issued from November to December 2012. Clearly, when private respondent filed his two (2) petitions for *certiorari* and prohibition on 15 October 2014 with the RTC, the six (6)-month reglementary period had already lapsed. Indeed, the COA rightfully issued 31 March 2014 Notices of Finality of Decision. Under Section 1 of Rule XIII of the COA Rules of Procedure:

> Section 1. Execution shall issue upon a decision that finally disposes of the case. — Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been fully perfected.

Given that the disallowances have become final and executory, the RTC could no longer alter the same. It should have dismissed private respondent's petitions.

The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law,[61] and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[62]

WHEREFORE, the petition is **GRANTED**. The petitions docketed as Special Civil Action Nos. P-155-2014 and P-156-2014 before Branch 33, Regional Trial Court of Pili, Camarines Sur are hereby **DISMISSED**. Accordingly, COA Notices of Disallowances Nos. 2012-100-024, 2012-100-25, 2012-100-26,

---

[60] *See Mamaril v. Domingo*, G.R. No. 100284, 13 October 1993 [Per J. Quiason]; *Creser Precision Systems, Inc. v. COA*, G.R. No. 143803, 17 November 2005, 511 Phil. 629 (2005) [Per J. Garcia].

[61] *Republic v. Fetalvero*, G.R. No. 198008, 04 February 2019 [Per J. Leonen].

[62] *Gadrinab v. Salamanca*, G.R. No. 194560, 11 June 2014, 736 Phil. 279 (2014) [Per J. Leonen].

2012-100-37, 2012-100-40, 2012-100-39, 2012-100-041, 2012-100-42, 2012-100-43, 2012-100-044 are hereby **AFFIRMED** and declared **FINAL** and **EXECUTORY**. Accordingly, execution may be issued against the persons identified in the aforesaid notices of disallowances.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Hernando, Carandang, Inting, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, Lazaro-Javier, and *Delos Santos, JJ.*, on official leave.

THIRD DIVISION

[G.R. No. 206109. November 25, 2020]

SPOUSES FLORENTINO R. MAYNES, SR. and SHIRLEY M. MAYNES, Substituting SHEILA M. MONTE, *Petitioners, v.* **MARIVIN OREIRO, doing business under the name of OREIRO'S BOUTIQUE AND MERCHANDISE,** *Respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR PROCEEDINGS; REMEDIAL LAW; SINCE TECHNICAL RULES OF PROCEDURE DO NOT STRICTLY APPLY TO LABOR PROCEEDINGS, PARTIES COULD PRESENT EVIDENCE FOR THE FIRST TIME ON APPEAL TO THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). — Technical rules of procedure do not strictly apply in labor proceedings. "[P]etitioners could present evidence for the first time on appeal to the NLRC. It is well settled that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases." Thus, Oreiro was not precluded from presenting evidence during the proceedings before the labor tribunal. Monte is likewise allowed to present controverting evidence but did not do so.

2. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES FOR DISMISSAL; LOSS OF TRUST AND CONFIDENCE; THE TASKS OF HAVING OVERALL SUPERVISION AND CONTROL OVER AN OUTLET STORE, SAFEKEEPING AND REMITTANCE OF SALES, AND PREPARATION AND INVENTORY OF ITEMS ARE IMBUED WITH TRUST AND CONFIDENCE. — Article 297 (c), which refers to "fraud or willful breach by the employee of the trust reposed in [him/her] by [his/her] employer" or simply termed as "loss of trust and confidence," is a just cause for dismissal. "The requisites for dismissal on the ground of loss of trust and confidence are: (1) the employee concerned must be holding a position of trust and confidence;

and (2) there must be an act that would justify the loss of trust and confidence. In addition to these, such loss of trust relates to the employee's performance of duties."

Monte's position is clearly imbued with trust and confidence. She was tasked "to perform overall supervision and control of the x x x outlet [including] receiving of different items from the main office in Bacnotan; safekeeping and remittance of daily sales; preparation of [inventory]; recording of items released on credit and issuance of receipts for payments made; and giving items on account or credit to recognized local dealers. [She] also exercises discretion on the quantity and manner of payment of items released on credit to local dealers or retailers."

. . .

. . . The right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to employers of reasonable return on investments." Withal, based on the attendant circumstances, the Court has reason to rule that Oreiro dismissed Monte with just cause.

3. ID.; ID.; ID.; PROCEDURAL DUE PROCESS; REQUISITES THEREOF.— The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted."

4. ID.; ID.; ID.; AN EMPLOYEE WHO IS DISMISSED BASED ON A JUST CAUSE BUT WITHOUT BEING ACCORDED THE RIGHT TO PROCEDURAL DUE PROCESS IS ENTITLED TO NOMINAL DAMAGES.— At the same time, it was likewise established that Monte was not accorded her right to procedural due process. She was not given any notice to explain or the opportunity to be heard before her dismissal. She only learned about her dismissal from service when notices were posted in the premises of the outlet stating that she is already terminated from her work. Thus, as correctly held by the CA, she is entitled to an award of nominal damages in the amount of ₱30,000.00 in accordance with recent jurisprudence.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Dolendo & Associates for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 22, 2012 Decision[2] and March 6, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 121428.

The CA reversed and set aside the April 25, 2011 Decision[4] and June 30, 2011 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-001707-10 which affirmed the Executive Labor Arbiter's (ELA) June 15, 2009 Decision[6] declaring Sheila M. Monte (Monte) to have been illegally dismissed from employment.

The Antecedents:

Monte was a Sales Clerk at respondent Marivin Oreiro's (Oreiro) Boutique and Merchandise (Boutique) outlet in Bangar, La Union.[7] She claimed that on February 6, 2007, she was summarily dismissed from employment without just cause and due process. Hence, she filed a Complaint[8] for illegal dismissal,

---

[1] *Rollo*, pp. 10-31.

[2] Id. at 33-50; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz.

[3] Id. at 633-634.

[4] Id. at 97-109; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

[5] Id. at 91-95.

[6] Id. at 492-498; penned by Executive Labor Arbiter Vito C. Bose.

[7] Id. at 454.

[8] The Complaint was not attached.

underpayment of wages, non-payment of overtime pay, 13th month pay and separation pay, as well as damages and attorney's fees.[9]

Conversely, Oreiro denied illegally dismissing Monte. She contended that despite Monte's infractions amounting to breach of trust and confidence, the latter was never terminated from the service as in fact, Monte abandoned her work.[10]

Ruling of the Executive Labor Arbiter:

The ELA declared that Monte was illegally dismissed and did not abandon her work since she even reported for work on February 6, 2007 despite the fact that her notice of termination was already posted in the premises of the store. She was not accorded procedural due process; no notice or investigation was conducted; neither was she allowed to explain her side.[11]

The ELA awarded her damages and attorney's fees, in addition to backwages, separation pay, 13th month pay and salary differential.[12]

Ruling of the National Labor Relations Commission:

In her Memorandum[13] filed before the NLRC, Oreiro provided more details regarding Monte's infractions. Oreiro narrated that Monte did not issue receipts for payments made by the clients of the boutique. Certain customers were also listed to have uncollected payments when they had in fact already settled their accountabilities. Monte also borrowed money from the store's clients and would offset her loan against the store's receivables from said client.

---

[9] *Rollo*, p. 492.

[10] Id. at 35-36.

[11] Id. at 493-495.

[12] Id. at 497-498.

[13] Memorandum of Appeal and the Motion to Reduce Appeal Bond with Motion to Admit Attached Cash Bond.

Moreover, a total of 3,945 items amounting to ₱396,728.00 delivered to the Bangar outlet were not reflected in the store's inventory. Monte also did not remit the cash paid by customers totalling ₱62,875.00.[14] Some items amounting to ₱224,699.00 were found to be missing and/or sold to fictitious persons. When confronted with said findings, Monte did not offer any explanation; instead, she left the key to the outlet and never came back.[15] Oreiro thus initiated a complaint with the local police of Bangar wherein Monte was invited to explain. Monte appeared but failed to identify the customers whom she reported to have availed of items on credit.[16]

Oreiro contended that there was no illegal dismissal to speak of. On the contrary, there was sufficient evidence that Monte committed serious misconduct resulting in loss of trust and confidence. According to Oreiro, the ELA failed to appreciate the Promissory Note executed by Monte herself in favor of Oreiro as well as the affidavits of customers, and company documents such as the inventory ledgers duly signed by Monte, which all established her serious misconduct warranting her dismissal from employment. Oreiro posited that these were enough bases to dismiss Monte on the ground of loss of trust and confidence.[17]

In its April 25, 2011 Decision,[18] the NLRC denied Oreiro's appeal for lack of merit. It pointed out that it cannot entertain Oreiro's allegations that Monte committed acts of serious misconduct since Oreiro is not allowed to change her theory on appeal, *i.e.*, from abandonment of work to a valid dismissal.[19] The labor tribunal noted that no inventory ledgers allegedly signed by Monte were presented for the ELA's consideration.

---

[14] *Rollo*, p. 457.

[15] Id. at 458.

[16] Id. at 459.

[17] Id. at 460-463.

[18] Id. at 97-109.

[19] Id. at 103.

In any case, it was not shown that Monte was responsible for the missing stocks.[20]

The NLRC also noted discrepancies between the alleged amount lost as presented by Oreiro before the prosecutor and with the labor tribunal. It even adverted to a Resolution[21] dated September 25, 2007 wherein the prosecutor found that Monte was on leave during the period when Oreiro supposedly incurred losses, which cast doubt on the veracity of the audit report.[22] In addition, the NLRC noticed that the copies of order receipts[23] allegedly issued by Monte to fictitious persons did not bear her signature while some bore only her printed name. It likewise disregarded the itemized list of lost stocks[24] with the first page bearing Monte's signature because it was belatedly submitted only in Oreiro's motion for reconsideration.[25]

Oreiro's motion for reconsideration[26] was denied by the NLRC in a Resolution[27] dated June 30, 2011.

Ruling of the Court of Appeals:

Dismayed, Oreiro filed a Petition for *Certiorari* and Prohibition[28] before the CA. Oreiro mainly argued that she submitted on appeal "documents bearing the signature of Shiela Monte admitting her act of misappropriating daily cash sales amounting to ₱6,025.00 and an initial list of missing stocks prepared during a spot audit amounting to ₱26,930.00 which she acknowledged responsibility by affixing her own signature

---

[20] Id. at 505-506.

[21] Id. at 529-531.

[22] Id. at 105-106.

[23] Id. at 143-150.

[24] Id. at 131-136.

[25] Id. at 107-108.

[26] Id. at 157-181.

[27] Id. at 91-95.

[28] Id. at 51-87.

aside from the stocks belonging to old accounts which [were] likewise missing amounting to ₱88,423.00 which Shiela Monte admitted with her own signature. Also submitted were unauthorized receipts which Shiela Monte issued to fictitious person[s] prepared in her own handwriting."[29]

Monte, on the other hand, opined that Oreiro cannot change her theory on appeal from abandonment to dismissal based on a just cause.[30] Likewise, she pointed out that Oreiro's belated submission of documents was not reasonably explained, especially when these were available even before the inception of the present case.[31]

In its assailed October 22, 2012 Decision,[32] the CA ruled that Oreiro did not change her theory on appeal and that the allegation of "loss of trust and confidence" as a ground for Monte's termination was raised as an issue before the ELA. In Oreiro's Position Paper,[33] the theory of "loss of trust and confidence" was alluded to when Oreiro presented the inventory conducted by the bookkeeper showing that various stocks were missing under Monte's custody. Oreiro did not confine her arguments to "abandonment" and emphasized that Monte violated the store's policies.

Moreover, the CA held that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. Thus, even if the evidence was not submitted before the ELA, due introduction of evidence before the NLRC should merit its admission in keeping with fairness and equity.[34]

---

[29] Id. at 66.

[30] Id. at 546.

[31] Id. at 548.

[32] Id. at 33-50.

[33] Id. at 499-502.

[34] Id. at 39-40.

In view of the foregoing, the appellate court ruled that there was just cause for Monte's dismissal, *i.e.*, loss of trust and confidence. The CA noted that Oreiro established by substantial evidence that Monte committed the following infractions: 1) appropriated for her personal use daily sales amounting to ₱6,025.00; 2) lost various stocks under her care; and, 3) issued items to fictitious customers.[35]

It explained that as a Sales Clerk, Monte occupied a position of trust and confidence since she is tasked to handle the stocks/ inventory and funds of the business.[36]

Nonetheless, the CA found that Oreiro failed to observe the twin requirements of notice and hearing in terminating Monte. Oreiro failed to notify Monte of her infractions and to give her a chance to explain. No conference or hearing was held between the parties. Oreiro's failure to observe procedural due process entitles Monte to the award of nominal damages in the amount of ₱30,000.00.[37]

Incidentally, Monte died during the pendency of the case and was substituted by her parents, petitioners Florentino R. Maynes, Sr. and Shirley M. Maynes (Spouses Maynes).[38]

The dispositive portion of the CA's assailed October 22, 2012 Decision provides:

> **WHEREFORE**, the instant Petition is **GRANTED**. The challenged National Labor Relations Commission's April 25, 2011 Decision and June 30, 2011 Resolution in NLRC LAC No. 08-001707-10 (NLRC-RAB 1-08-1148-07) are **ANNULLED AND SET ASIDE** and a new one entered ordering the herein petitioner [Oreiro] to pay the herein private respondent [Monte] nominal damages in the amount of ₱30,000.00.
>
> **SO ORDERED.**[39]

---

[35] Id. at 43.

[36] Id. at 46.

[37] Id. at 47-49.

[38] Id. at 49.

[39] Id. at 49-50.

The Spouses Maynes filed a Motion for Reconsideration[40] which was subsequently denied in the CA's March 6, 2013 Resolution.[41]

Hence, this Petition for Review on *Certiorari*.

Issue:

Whether or not Monte was illegally dismissed.

Our Ruling

The Petition is unmeritorious.

Evidence may be presented on appeal before the labor tribunal.

Key in resolving whether Monte's dismissal was valid or not is the determination of whether Oreiro's evidence submitted before the NLRC should be considered. We rule in the affirmative. Technical rules of procedure do not strictly apply in labor proceedings. "[P]etitioners could present evidence for the first time on appeal to the NLRC. It is well settled that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases."[42] Thus, Oreiro was not precluded from presenting evidence during the proceedings before the labor tribunal. Monte is likewise allowed to present controverting evidence but did not do so. To elucidate,

> [t]he settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. In fact, labor officials are mandated by the Labor Code to use every and *all reasonable means to ascertain the facts in each case* speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. Thus, in *Lawin Security Services v. NLRC*, and *Bristol Laboratories Employees' Association-*

---

[40] Id. at 624-631.

[41] Id. at 633-634.

[42] *Clarion Printing House, Inc. v. National Labor Relations Commission*, 500 Phil. 61, 76 (2005).

DFA v. NLRC, we held that even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to the NLRC is enough basis for the latter to be more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first cause of action would be more consistent with equity and the basic notions of fairness.[43]

Oreiro's pieces of documentary evidence submitted before the labor tribunal are material to establish her contention that Monte committed infractions which led to the loss of trust and confidence reposed upon her. The documents showing Monte's signatures or handwritten notations were also relevant as they rebutted Monte's denial of having affixed or wrote them. In fine, justice and equity call for the admission and appreciation of such evidence.

Oreiro did not change her theory on appeal.

We agree with the CA's pronouncement that Oreiro did not change her theory on appeal. In Oreiro's Position Paper, she already put forth the argument that breach of trust is a ground for dismissal. She also attached affidavits and copies of the inventory in order to substantiate her claim of loss of trust and confidence. Although Oreiro did not adequately discuss the reasons for the loss of trust and confidence, the fact remains that she made such argument before the ELA. On appeal with the NLRC, she further elaborated on this argument by appending additional relevant documents.

Monte's dismissal was for a just cause.

It is a settled rule that "[t]wo requisites must concur to constitute a valid dismissal from employment: (1) the dismissal must be for any of the causes expressed in Article 282 (now Article 297) of the Labor Code;[44] and (2) the employee must be given an opportunity to be heard and to defend himself."[45]

---

[43] Id. at 76-77. Citation omitted.

[44] Art. 282 (now Art. 297). *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

Article 297 (c), which refers to "fraud or willful breach by the employee of the trust reposed in [him/her] by [his/her] employer" or simply termed as "loss of trust and confidence," is a just cause for dismissal. "The requisites for dismissal on the ground of loss of trust and confidence are: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. In addition to these, such loss of trust relates to the employee's performance of duties."[46]

Monte's position is clearly imbued with trust and confidence. She was tasked "to perform overall supervision and control of the x x x outlet [including] receiving of different items from the main office in Bacnotan; safekeeping and remittance of daily sales; preparation of [inventory]; recording of items released on credit and issuance of receipts for payments made; and giving items on account or credit to recognized local dealers. [She] also exercises discretion on the quantity and manner of payment of items released on credit to local dealers or retailers."[47]

Oreiro submitted a Stocks Lost List[48] which indicated that certain stocks were lost while Monte was the Sales Clerk

---

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

[45] *Del Rosario v. CW Marketing & Development Corp.*, G.R. No. 211105, February 20, 2019 citing Sections 2 and 5, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.

[46] *Cadavas v. Court of Appeals*, G.R. No. 228765, March 20, 2019 citing *Central Azucarera De Bais v. Heirs of Zuela Apostol*, G.R. No. 215314, March 14, 2018.

[47] *Rollo*, p. 455.

[48] Id. at 505-506.

managing the Bangar branch. She also presented a list of old accounts[49] in which lost payments or products cannot be located or explained by Monte (totalling ₱88,423.00). Significantly, Monte herself signed and acknowledged said list. In addition, Oreiro also submitted a list of lost stocks[50] bearing Monte's signature indicating Monte's admission of her infractions. Even the inventory/ledgers, as well as the order slips with fictitious or non-existent persons[51] would show that there were anomalies in the sales.

We note that Monte did not even offer any justification for the uncovered anomalies. She also did not deny the authenticity of her signature in the Promissory Note wherein she acknowledged her misappropriation of cash sales and that "due to unavoidable circumstances, [she] took & obtain[ed] the amount of Six Thousand & Twenty Five Pesos (₱6,025) daily sales on February 3, 2001."[52] She likewise wrote that it was discovered during the spot audit that stocks were lost. Thus, these infractions caused Oreiro to lose trust and confidence in Monte.

"[A]rticle 282 (now Article 297) of the Labor Code lists loss of trust and confidence in an employee, who is entrusted with fiducial matters, or with the custody, handling, or care and protection of the employer's property, as a just cause for an employee's dismissal.[53] x x x We have recognized the employer's authority to sever the relationship with an employee.[54] The right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to

---

[49] Id. at 540-541.

[50] Id. at 131-136.

[51] *See* letter responses of the *barangays* involved as well as the local COMELEC office; *rollo*, pp. 137-141.

[52] *Rollo*, p. 117.

[53] *Del Rosario v. CW Marketing & Development Corp.*, G.R. No. 211105, February 20, 2019 citing *Condo Suite Club Travel, Inc. v. National Labor Relations Commission*, 380 Phil. 660 (2000).

[54] Id., citing *Moya v. First Solid Rubber Industries, Inc.*, 718 Phil. 77 (2013).

employers of reasonable return on investments."[55] Withal, based on the attendant circumstances, the Court has reason to rule that Oreiro dismissed Monte with just cause.

Monte was denied of her right to procedural due process.

Although there was just cause for her dismissal, Monte was denied procedural due process. "In *Distribution & Control Products, Inc. v. Santos*,[56] the Court has explained that procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted."[57]

In the landmark case of *Agabon v. National Labor Relations Commission*,[58] We held that —

> Where the dismissal is for a just cause, as in the instant case, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. However, the employer should indemnify the employee for the violation of his statutory rights, as ruled in *Reta v. National Labor Relations Commission*. The indemnity to be imposed should be stiffer to discourage the abhorrent practice of "dismiss now, pay later," which we sought to deter in the *Serrano* ruling. The sanction should be in the nature of indemnification or penalty and should depend on the facts of each case, taking into special consideration the gravity of the due process violation of the employer.

---

[55] Id., citing 1987 CONSTITUTION, Art. XIII, § 3, par. 4.

[56] Id., citing *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423 (2017).

[57] Id.

[58] 485 Phil. 248 (2004).

Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[59]

In the case at bench, the just cause for the dismissal of Monte from the service was duly established, *i.e.*, loss of trust and confidence considering the several infractions that she committed. At the same time, it was likewise established that Monte was not accorded her right to procedural due process. She was not given any notice to explain or the opportunity to be heard before her dismissal. She only learned about her dismissal from service when notices were posted in the premises of the outlet stating that she is already terminated from her work. Thus, as correctly held by the CA, she is entitled to an award of nominal damages in the amount of ₱30,000.00 in accordance with recent jurisprudence.[60]

WHEREFORE, the instant Petition is **DENIED**. The assailed October 22, 2012 Decision and March 6, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 121428 are **AFFIRMED**.

SO ORDERED.

Leonen (*Chairperson*), *Inting,* and *Rosario, JJ.*, concur.

Delos Santos,[*] *J.,* on official leave.

---

[59] Id. at 287-288.

[60] *Slord Development Corp. v. Noya*, G.R. No. 232687, February 4, 2019 citing *Ortiz v. DHL Philippines Corporation*, 807 Phil. 626 (2017).

THIRD DIVISION

[G.R. No. 211073. November 25, 2020]

EFREN SANTOS, JR. and JERAMIL SALMASAN, *Petitioners, v.* **KING CHEF/MARITES ANG/JOEY DELOS SANTOS,** *Respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES; THE ISSUE OF WHETHER AN EMPLOYEE WAS DISMISSED INVOLVES FACTUAL DETERMINATION THAT IS NOT ALLOWED IN A RULE 45 PETITION EXCEPT WHEN THE FINDINGS THEREON OF THE QUASI-JUDICIAL AGENCIES ARE CONFLICTING.—** The resolution of this case calls for a factual determination of whether petitioners were dismissed by respondents, which factual determination is generally not allowed in a Rule 45 petition. One of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary. Here, considering that the findings of the NLRC and the LA are conflicting, We shall proceed to review their factual and legal conclusions.

2. **ID.; ID.; ID.; ID.; EVIDENCE; QUANTUM OF PROOF; AN EMPLOYEE'S DISMISSAL MUST BE PROVED BY SUBSTANTIAL EVIDENCE BEFORE THE ISSUE ON THE ILLEGALITY OF SUCH DISMISSAL MAY BE DETERMINED.—** [A]fter a meticulous study of the records, We find that there is no substantial evidence to establish that petitioners were in fact dismissed from employment. Petitioners merely alleged that they were terminated by their chief cook and were barred from entering the restaurant, without offering any evidence to prove the same. They failed to provide any document, notice of termination or even any letter or correspondence regarding their termination. Aside from their

bare allegations, they did not present any proof which would at least indicate that they were in fact dismissed.

On the contrary, the evidence on record points to the fact that after petitioners failed to report on December 25,2011, and after they went back to their workplace merely to get their share in the tips the following day, they refused to return to work and continued to be on AWOL thereafter. . . .

. . .

Considering the above circumstances and taking them all together, We are inclined to agree with respondents that before they could even impose disciplinary action upon the petitioners, they already filed the complaint for illegal dismissal on January 2, 2012, just when the Christmas season was over.

"Without substantial evidence that petitioners were indeed dismissed, it is futile to determine the legality or illegality of their supposed dismissal." We are thus constrained to uphold the NLRC's ruling, as affirmed by the CA, that there was no illegal dismissal in this case.

3. ID.; ID.; ID.; ABANDONMENT; ELEMENTS THEREOF; THE OPERATIVE ACT TO DETERMINE ABANDONMENT IS THE EMPLOYEES' ACT OF PUTTING AN END TO THEIR EMPLOYMENT.— Be that as it may, respondents are not correct in arguing that there was abandonment on the part of the petitioners. "Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts." The employer must prove that *first*, the employee "failed to report for work for an unjustifiable reason," and s*econd*, the "overt acts showing the employee's clear intention to sever their ties with their employer."

There was no showing here that petitioners' absences were due to unjustifiable reason, or that petitioners clearly intended to terminate their employment. It does not suffice that petitioners pre-empted respondents by filing the complaint for illegal dismissal before respondents can impose disciplinary action. "The operative act is still the employees' ultimate act of putting an end to their employment."

4. ID.; ID.; ID.; WHEN NEITHER THE EMPLOYEES' ASSERTION OF ILLEGAL DISMISSAL NOR THE

EMPLOYER'S CLAIM OF ABANDONMENT IS ESTABLISHED, THE PARTIES MUST BE PLACED ON EQUAL FOOTING AND BEAR THEIR OWN LOSS.— "In cases where there is both an absence of illegal dismissal on the part of the employer and an absence of abandonment on the part of the employees, the remedy is reinstatement but without backwages." However, considering that petitioners do not pray for such relief, "each party must bear [their] own loss," placing them on equal footing. Thus, the NLRC, as affirmed by the CA, is correct in deleting the award of separation pay to petitioners.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Eric Anthony Ty for respondents.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 22, 2013 Decision[2] and January 21, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130662.

The assailed Decision affirmed the February 28, 2013 and April 18, 2013 Resolutions[4] of the National Labor Relations Commission (NLRC) finding unmeritorious petitioners Efren Santos, Jr. (Santos) and Jeramil Salmasan's (Salmasan; collectively petitioners) claim of illegal dismissal against

---

[1] *Rollo*, pp. 11-32.

[2] Id. at 34-42; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela.

[3] Id. at 44-45.

[4] Id. at 143-154, 173-174; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus.

respondents King Chef, Marites Ang (Ang), and Joey Delos Santos (Delos Santos, collectively, respondents).[5] In its assailed Resolution,[6] the appellate court subsequently denied petitioners' Motion for Reconsideration.[7]

King Chef is a Chinese restaurant owned by Ang, with Delos Santos as its General Manager.[8] It employed Santos on February 19, 2011 and Salmasan on July 29, 2010, both as cooks.[9]

On December 25, 2011, Santos rendered only a half day work without prior authorization.[10] Salmasan, on the other hand, did not report at all.[11] Petitioners claimed that in view thereof, they were dismissed from employment.[12] They averred that when they tried to report for work, their chief cook told them that they were already terminated.[13]

Accordingly, petitioners filed their complaint for illegal dismissal, underpayment of salaries, non-payment of salaries and thirteenth month pay, damages, and attorney's fees.[14]

Respondents denied that petitioners were dismissed from work. They argued that petitioners violated the December 22, 2011 memorandum informing the employees of King Chef that no absences would be allowed on December 25, 26, 31 and January 1 unless justified.[15] After petitioners failed to report for work

---

[5] Id. at 41.

[6] Id. at 44-45.

[7] Id. at 45.

[8] Id. at 35.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 78, 90.

on December 25, 2011, and returned the following day merely to get their share in the accrued tips, they allegedly went on absence without leave (AWOL) for the rest of the Christmas season.[16]

Respondents believed petitioners went on AWOL after they got wind of respondents' decision to impose disciplinary action against them for their unauthorized absence on December 25, 2011.[17] Respondents claimed that even before they could impose disciplinary action on petitioners, the latter already filed a complaint for illegal dismissal against them on January 2, 2012.[18]

Ruling of the Labor Arbiter (LA):

In its October 29, 2012 Decision,[19] the LA found petitioners to have been illegally dismissed.[20] The Arbiter held that the respondents failed to prove that petitioners indeed went on AWOL.[21] Likewise, there was no proof that petitioners received a copy of the December 22, 2011 memorandum.[22] And since there was no directive to work on December 25, 2011, petitioners "had all the reason not to report for work" as it was Christmas day.[23] In any case, the LA held that petitioners' absence should not have warranted their dismissal.[24]

The dispositive portion of the Decision reads:

WHEREFORE, the complaint for illegal dismissal is GRANTED. Respondent RMB Royal Master Bee, Inc., doing business under the name and style King Chef Restaurant, is hereby ordered to pay

---

[16] Id. at 80.

[17] Id.

[18] Id. at 227.

[19] Id. at 116-126.

[20] Id. at 124-126.

[21] Id. at 120-123.

[22] Id. at 121-122.

[23] Id. at 122.

[24] Id.

complainants the sum of Php359,210.77, to wit:

1. Efren Santos, Jr. — Php163,291.26

2. Jeramil [Salmasan] — Php163,291.26

representing:

1. Full [b]ackwages computed from the time of their dismissal up to finality of this decision;

2. Separation pay equivalent to one month[‘s] wage for every year of service it being understood that six months shall be considered one full year;

3. Wage differentials; and

4. Attorney’s fees equivalent to ten (10%) percent of the total, or in the sum of Php32,628.25 monetary award.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part of this decision.

SO ORDERED.[25]

Ruling of the National Labor Relations Commission:

In its February 28, 2013 Resolution,[26] the NLRC modified the October 29, 2012 Decision of the LA after finding that petitioners were unable to show that they were dismissed in the first place.[27] The labor tribunal found that aside from petitioners’ bare allegations, they did not present any proof to support their claim of termination.[28] On the contrary, respondents were able to prove that after petitioners failed to report for work on December 25, 2011, and after they received their share on tips the following they, they continued to be absent for the rest of the Christmas season.[29] The NLRC held that since petitioners were unable to prove that they were indeed terminated,

---

[25] Id. at 124-126.

[26] Id. at 143-154.

[27] Id.

[28] Id. at 150.

[29] Id. at 149-151.

the complaint for illegal dismissal cannot be sustained pursuant to the principle that if there is no dismissal, there can be no question as to the legality or illegality thereof.[30]

The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the instant appeal is hereby declared partly with merit. The Decision of the Labor Arbiter is hereby **MODIFIED** deleting the awards for separation pay and full backwages, and correspondingly reducing the award of 10% attorney's fees.

SO ORDERED.[31]

Ruling of the Court of Appeals:

The CA affirmed the February 28, 2013 Resolution of the NLRC[32] and upheld its finding that there was no dismissal in the first place.[33] It gave credence to the evidence presented by respondents, as opposed to petitioners' bare allegations.[34] It stressed that before the respondents must bear the burden of proving that the dismissal was legal, petitioners must first establish by substantial evidence that indeed they were dismissed.[35] Since petitioners were unable to do this, the NLRC was correct in ruling that there was no illegal dismissal.[36]

The dispositive portion of the assailed Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant petition for lack of merit. The Resolutions rendered by the Second Division of the National Labor Relations Commission dated February 28, 2013 and April 18, 2013, respectively, in NLRC NCR Case No. 01-01193-12 (LAC No. 01-000205-13) are hereby **AFFIRMED**.

---

[30] Id. at 152, 148.

[31] Id. at 153-154.

[32] Id. at 41.

[33] Id. at 40.

[34] Id. at 148-153.

[35] Id. at 38.

[36] Id. at 40.

SO ORDERED.[37]

Petitioners sought reconsideration but it was denied by the CA in its assailed January 21, 2014 Resolution.[38]

Hence, this Petition.

The Petition:

Petitioners argue that the CA erred in sustaining the NLRC's finding that there was no dismissal as to their case.[39] They reiterate that when they tried to return and report for work after their absence on December 25, 2011, they were banned from entering the work premises and were informed that they were already terminated, without compliance with the requirements for valid dismissal.[40] Thus, their dismissal was illegal.[41]

In their Comment,[42] respondents maintain that petitioners were never dismissed in the first place, as they in fact abandoned their work.[43]

Issue

Whether or not petitioners were illegally dismissed.

Our Ruling

The Petition is devoid of merit.

Procedural matter:

The resolution of this case calls for a factual determination of whether petitioners were dismissed by respondents, which factual determination is generally not allowed in a Rule 45

---

[37] Id. at 41.

[38] Id. at 44-45.

[39] Id. at 17.

[40] Id. at 20-24.

[41] Id. at 20.

[42] Id. at 222-240.

[43] Id. at 226-228.

petition.[44] One of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary.[45] Here, considering that the findings of the NLRC and the LA are conflicting, We shall proceed to review their factual and legal conclusions.

Substantive matter:

In cases of illegal dismissal, the employer bears the burden to prove that the termination was for a valid or authorized cause. **But before the employer must bear the burden of proving that the dismissal was legal, it is well-settled that the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof. x x x**[46] (Emphasis supplied)

Here, after a meticulous study of the records, We find that there is no substantial evidence to establish that petitioners were in fact dismissed from employment. Petitioners merely alleged that they were terminated by their chief cook and were barred from entering the restaurant, without offering any evidence to prove the same. They failed to provide any document, notice of termination or even any letter or correspondence regarding their termination. Aside from their bare allegations, they did not present any proof which would at least indicate that they were in fact dismissed.

On the contrary, the evidence on record points to the fact that after petitioners failed to report on December 25, 2011, and after they went back to their workplace merely to get their share in the tips the following day, they refused to

---

[44] *Villola v. United Philippine Lines, Inc.*, G.R. No. 230047, October 9, 2019.

[45] *Paredes v. Feed the Children Phils., Inc.*, 769 Phil. 418, 433 (2015), citing *Agabon v. National Labor Relations Commission*, 458 Phil. 248, 277 (2004).

[46] *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 794 (2017), citing *Ledesma, Jr. v. National Labor Relations Commission*, 562 Phil. 939, 951 (2007), *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 154 (2011).

return to work and continued to be on AWOL thereafter. *First*, it is undisputed that petitioners went on AWOL on December 25, 2011 (half day for Salmasan).[47] *Second*, they in fact returned the following day to claim and receive their share in the tips as shown from the uncontroverted sign up sheet they signed,[48] which belies their assertion that they were banned from entering the premises after being absent on December 25, 2011. *Third*, petitioners themselves admitted that they continued to be on AWOL during "the Christmas season of 2011."[49] This was likewise reflected on their time cards.[50]

As correctly found by the NLRC:

In their Position Paper, complainants describe the manner by which they were allegedly dismissed, as follows:

> *"x x x Complainant Santos went to work only for half day only on December 25, 2011 so that they could celebrate Christmas with his family in Pampanga. When he reported to work on December 27, 2011, he was verbally informed by the supervisor and chief cook Joel Aroy not to report to work anymore because he was already terminated from his employment due to his one day absence. Complainant Salmasan on his part absented himself on December 25, 2011 to likewise celebrate Christmas with his family. The following day, he immediately reported back to work and started doing his work assignment.*

---

[47] *Rollo*, p. 48.

[48] Id. at 149.

[49] Id. at 69. As correctly observed by the NLRC:

x x x On this, Complainants themselves called their absenting acts as infraction, thus:

"Per complainant's recollection, the only infraction that they could think of is when they absented themselves ***during the Christmas season of 2011****"* (p. 10, Records)

This statement of Complainants, in fact reveal their absence as not only on December 25, 2011, but "during the Christmas season of 2011," which proves the claim of Respondents that Complainants continued with their AWOL x x x (Emphasis supplied)

[50] Id. at 227; 91-94.

However, when he was seen by their supervisor and chief cook Joel Aroy, he, same with complainant Santos was verbally terminated from his employment.

No valid explanation was given to complainants why they were being terminated from employment. Despite the same, they still tried to report to work and even made follow-ups through telephone calls. They were banned from entering the premises of King Chef hence on January 20, 2012; they filed this labor complaint against respondents." (p. 10, Records)

However, when Respondents declared that despite Complainants' absences on December 25, 2011 (half day for Complainant Efren Santos), **both Complainants reported on December 26, 2011 merely to collect their share of the tips for the period 11 to 25 December 2011, and exhibited proof to this claim by the document which Respondents describe as the December 26, 2011 "Sign Up Sheet," Complainants simply kept a silent stance**.

By these alone, three (3) facts are established: (1) that both Complainants absented themselves on December 25, 2011[,] a Christmas Day, without leave, hence, they were on Absence Without Leave or AWOL on that day; **(2) that nevertheless, both came on December 26, 2011 merely to get their share of the period's tips; (3) that it is not true that Complainant Santos reported for work on December 27, 2011, and Complainant Salmasan reported on December 26, 2011 to work; as Complainants have not presented any proof to this claim.**[51] (Emphasis supplied)

Even worse, petitioners made untruthful allegations in their pleadings. They claimed that they filed the complaint for illegal dismissal on January 20, 2012, but the NLRC found that it was filed earlier, thus:

The correct date Complain[an]t filed their complaint is of interest to Us. Complainants claim that they filed this case on January 20, 2012 (p. 10, Records), while Respondents reckon the date as January 2, 2012 (p. 21, Records). Carefully examining the records, We find Complainants[']' claim as at best evasive. The Minutes of the Single Entry Approach (SENA) is dated January 19, 2012 (p. 4, Records) with the parties already in attendance. **This can only lead to the**

[51] Id. at 148-150.

conclusion that Complainants had actually gone to NLRC earlier as claimed by Respondents, that is on January 2, 201[2]. So that by January 19, 2012, the Respondents had already been notified of Complainants' action, and had appeared in the conciliation hearing.

This gives credence to the claim of Respondents that then they had no time yet to discipline Complainants, when the latter filed this case. As noted above, "the Christmas season" during which complainants incurred their "only infraction" of having been "absented themselves" x x x started from December 24, 2011 and ended on January 1, 2012.[52] (Emphasis supplied)

Considering the above circumstances and taking them all together, We are inclined to agree with respondents that before they could even impose disciplinary action upon the petitioners, they already filed the complaint for illegal dismissal on January 2, 2012, just when the Christmas season was over.[53]

"Without substantial evidence that petitioners were indeed dismissed, it is futile to determine the legality or illegality of their supposed dismissal."[54] We are thus constrained to uphold the NLRC's ruling, as affirmed by the CA, that there was no illegal dismissal in this case.

Be that as it may, respondents are not correct in arguing that there was abandonment on the part of the petitioners.[55] "Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts."[56] The employer must prove that *first*, the employee "failed to report for work for an unjustifiable reason," and *second*, the "overt acts showing the

---

[52] Id. at 151-152.

[53] Id. at 227-228.

[54] *Villola v. United Philippine Lines, Inc.*, G.R. No. 230047, October 9, 2019.

[55] *Rollo*, p. 226.

[56] *Pu-od v. Ablaze Builders, Inc.*, 820 Phil. 1239, 1254 (2017), citing *JOSAN v. Aduna*, 682 Phil. 641, 648 (2012).

employee's clear intention to sever their ties with their employer."[57]

There was no showing here that petitioners' absences were due to unjustifiable reason, or that petitioners clearly intended to terminate their employment. It does not suffice that petitioners pre-empted respondents by filing the complaint for illegal dismissal before respondents can impose disciplinary action. "The operative act is still the employees' ultimate act of putting an end to their employment."[58]

"In cases where there is both an absence of illegal dismissal on the part of the employer and an absence of abandonment on the part of the employees, the remedy is reinstatement but without backwages."[59] However, considering that petitioners do not pray for such relief, "each party must bear [their] own loss," placing them on equal footing.[60] Thus, the NLRC, as affirmed by the CA, is correct in deleting the award of separation pay to petitioners.

WHEREFORE, the Petition is hereby **DENIED**. The assailed Decision rendered by the Court of Appeals in CA-G.R. SP No. 130662 is **AFFIRMED**. No cost.

SO ORDERED.

Leonen (*Chairperson*), *Inting*, and *Rosario, JJ.*, concur.

Delos Santos, J., on official leave.

---

[57] Id., citing *Protective Maximum Security Agency, Inc. v. Celso E. Fuentes*, 753 Phil. 482, 508 (2015).

[58] Id. at 1255.

[59] Id.

[60] Id., citing *MZR Industries v. Colambot*, 716 Phil. 617, 697 (2013).

THIRD DIVISION

[G.R. No. 217450. November 25, 2020]

ADELINA A. ROMERO, *Petitioner, v.* **JESSE[*] I. CONCEPCION, Mayor, Municipal Government of Mariveles, Province of Bataan,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; BACK SALARIES; DURING THE PENDENCY OF AN APPEAL, A SUSPENDED EMPLOYEE IS NOT ENTITLED TO BACK SALARIES.— It is settled that petitioner was not exonerated of the charges against her, but she was found guilty of a lesser offense with a lesser penalty. Thus, during the pendency of her appeal until the finality of the CA Decision in CA-G.R. SP No. 103081 on April 24, 2010, petitioner is not entitled to back salaries.

2. ID.; ID.; ID.; SUSPENSION; IF AT THE TIME OF THE FINALITY OF THE DECISION SUSPENDING AN EMPLOYEE, THE PENALTY OF SUSPENSION HAD ALREADY BEEN SERVED, THE SUSPENDED EMPLOYEE MUST BE IMMEDIATELY REINSTATED TO HIS OR HER FORMER POSITION.— [F]rom the time of the finality of the CA Decision in CA-G.R. SP No. 103081, there is no longer any pending appeal. Considering that at the time of the finality of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081, petitioner had already served her one (1) year suspension; thus she should have been immediately reinstated to her former position. The prohibition on payment of back salaries should no longer apply. . . .

It is the duty of respondent to reinstate petitioner as Municipal Accountant of the Municipal Government of Mariveles, Bataan in compliance with the final and executory decision of the CA. However, even after the finality of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081, respondent still refused

[*] Sometimes spelled as Jessie in some parts of the *rollo*.

to reinstate petitioner. Petitioner had to file a Motion for Execution before the CSC and litigate once again on the legality of respondent's action dropping her from the roll. Respondent's act is clearly dilatory and is intended to delay the execution of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081.

APPEARANCES OF COUNSEL

Delos Reyes Irog Braga and Associates for petitioner.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated August 29, 2014 and the Resolution[3] dated March 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131907. The CA modified Resolution No. 1300810[4] dated April 29, 2013 and Resolution No. 1302038[5] dated September 2, 2013 of the Civil Service Commission (CSC).

The Antecedents

Adelina A. Romero (petitioner) was the Municipal Accountant of the Municipality of Mariveles, Bataan from 1992 to 2002. In July 2001, Atty. Jose Michael P. Operario, Leonardo Mallari,

---

[1] *Rollo*, pp. 3-15.

[2] *Id.* at 20-28; penned by Associate Justice Ramon A. Cruz with Associate Justices Hakim S. Abdulwahid and Romeo F. Barza, concurring.

[3] *Id.* at 30-31.

[4] *Id.* at 48-52; signed by Commissioner Robert S. Martinez and Chairman Francisco T. Duque III, and attested by Director IV Dolores B. Bonifacio, Commission Secretariat and Liaison Office.

[5] *Id.* at 42-47; signed by Commissioner Robert S. Martinez, Chairman Francisco T. Duque III and Commissioner Nieves L. Osorio, and attested by Director IV Dolores B. Bonifacio, Commission Secretariat and Liaison Office.

Vice Mayor Victoriano C. Isip, and *Sangguniang Bayan* of Mariveles members, namely: Rodante A. Casino, Joseph T. Pereyra, Rafael Z. Sanchez, Ernie C. Del Rosario, Norberto M. Venturina, Jose C. Villapando, and Neil Francis V. Garrido filed an administrative complaint against the petitioner with regard to her work ethic and conduct related to the performance of her duty.[6]

On October 15, 2001, after conducting a fact-finding investigation, the CSC Regional Office filed an administrative case against petitioner for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.[7]

On February 11, 2002, the CSC Regional Office preventively suspended petitioner for a period of 90 days to avoid influence in the investigation of the case.[8]

On July 4, 2003, the CSC Regional Office found petitioner guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and imposed on her the penalty of dismissal from the service with the accessory penalties of perpetual disqualification for reemployment in the government and bar from taking any civil service examination in the future, without prejudice to the filing of criminal charge against her if the evidence so warrants.[9]

Petitioner filed a motion for reconsideration. In its Order dated March 15, 2005, the CSC Regional Office denied the motion.[10]

Petitioner appealed to the CSC. In its Resolution No. 080373 dated March 12, 2008, the CSC denied the appeal.[11]

---

[6] *Id.* at 54.

[7] *Id.* at 56.

[8] *Id.* at 57.

[9] *Id.* at 58.

[10] *Id.*

[11] As culled from the Decision dated March 17, 2010 of the Court of Appeals in CA-G.R. SP No. 103081, *id.* at 53.

Petitioner filed a petition for review before the CA docketed as CA-G.R. SP No. 103081. In its Decision[12] dated March 17, 2010 in CA-G.R. SP No. 103081, the CA partially granted the petition and held petitioner guilty of Simple Misconduct and Conduct Prejudicial to the Best Interest of the Service, with a penalty of suspension for one (1) year. The CA Decision in CA-G.R. SP No. 103081 became final and executory on April 24, 2010.[13]

Due to the then incumbent Mayor's refusal to reinstate her, petitioner filed a Motion for Execution[14] of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081 before the CSC.

The Resolutions of the CSC

In its Resolution No. 1100967[15] dated July 19, 2011, the CSC granted petitioner's Motion for Execution and ordered her reinstatement to her former position as Municipal Accountant of the Municipal Government of Mariveles, Bataan, with payment of back salaries corresponding to the period after her suspension for one (1) year until her actual reinstatement.[16]

Jesse I. Concepcion, in her capacity as the Municipal Mayor of Mariveles, Bataan (respondent), filed a motion for reconsideration. In its Resolution No. 1300810[17] dated April 29, 2013, the CSC reversed and set aside its Resolution No.

---

[12] *Id.* at 53-69; penned by Associate Justice Mario V. Lopez (now a member of the Court) with Associate Justices Portia Aliño-Hornachuelos and Arcangelita M. Romilla-Lontok, concurring.

[13] See Entry of Judgment of the Decision dated March 17, 2010 in CA-G.R. SP No. 103081, *id.* at 70.

[14] *Id.* at 71-73.

[15] *Id.* at 90-92; signed by Commissioner Mary Ann Z. Fernandez-Mendoza and Commissioner Rasol L. Mitmug; Chairman Francisco T. Duque III was on official business; and attested by Director IV Dolores B. Bonifacio, Commission Secretariat and Liaison Office.

[16] *Id.* at 92.

[17] *Id.* at 48-52.

1100967 dated July 19, 2011.[18] The CSC ruled that the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081 modified the CSC Resolution No. 080373 dated March 12, 2008 only insofar as it ruled that petitioner was guilty only of Simple Misconduct and Conduct Prejudicial to the Best Interest of the Service and that the penalty imposed should be suspension for one (1) year.[19] The CSC ruled that petitioner was not entitled to back salaries during the period of her suspension from the service because she was not fully exonerated of the charges. The CSC further ruled that petitioner cannot be reinstated to the service because of Office Order No. 126 dated July 28, 2004 dropping her from the roster of municipal employees effective July 8, 2004.[20]

Petitioner filed a Motion for Reconsideration.[21] In its Resolution No. 1302038 dated September 2, 2013, the CSC denied the motion.

Petitioner filed a Petition for Review[22] under Rule 43 before the CA.

The Decision of the CA

In its assailed Decision promulgated on August 29, 2014, the CA partially granted the petition.

The CA ruled that the CSC Resolution No. 1100967 dated July 19, 2011 erroneously ordered the payment of petitioner's back salaries corresponding to the period after her one (1) year suspension until her actual reinstatement; that the mere reduction of petitioner's penalty on appeal did not entitle her to back salaries because she was not exonerated of the charges against her; and that the CSC correctly set aside its Resolution No.

---

[18] *Id.* at 52.

[19] *Id.* at 48.

[20] *Id.* at 51.

[21] *Id.* at 118-122.

[22] *Id.* at 32-40.

1100967 dated July 19, 2011 in its Resolution No. 1300810 dated April 29, 2013 wherein it ruled that petitioner was not entitled to back salaries.

However, the CA found that the CSC erred in ruling that petitioner can no longer be reinstated to her former position as Municipal Accountant of the Municipal Government of Mariveles, Bataan because she had been dropped from the roll; that petitioner was dropped from the roll in view of the application of Section 12, Rule 43 of the Rules of Court under which the appeal to the CSC and the CA did not stay the execution of the Decision dated July 4, 2003 of the CSC Regional Office dismissing petitioner from the service; that since it downgraded petitioner's penalty to suspension for one (1) year in CA-G.R. SP No. 103081, respondent cannot justify her dropping from the roll because of her absence for more than 30 days; that petitioner's absence was due to the implementation of the Decision dated July 4, 2003 of the CSC Regional Office during the pendency of the appeal; that during that period, petitioner could not be expected to report for work; and that petitioner was considered to have been under preventive suspension during the pendency of the appeal.[23]

The dispositive portion of the CA Decision reads:

> WHEREFORE, the Petition for Review is PARTIALLY GRANTED. The Resolution No. 13-00810 dated April 29, 2013 and Resolution No. 13-02038 dated September 2, 2013 are modified in that the incumbent Mayor of the Municipal Government of Mariveles, Bataan is directed to immediately reinstate Adelina Romero to her former position as Municipal Accountant of the Municipal Government of Mariveles, Bataan without payment of back salaries.
>
> SO ORDERED.[24]

Petitioner filed a Motion for Partial Reconsideration,[25] while respondent filed a Motion for Reconsideration.[26] In its Resolution

---

[23] *Id.* at 24-26.

[24] *Id.* at 27.

[25] *Id.* at 148-155.

[26] *Id.* at 163-167.

dated March 5, 2015, the CA denied both motions for lack of merit.

Hence, the petition.

The Issue

Whether petitioner is entitled to back salaries from the time of the finality of the CA Decision on April 24, 2010 in CA-G.R. SP No. 103081 dated March 17, 2010 until her actual reinstatement as Municipal Accountant of the Municipal Government of Mariveles, Bataan.

The Ruling of the Court

The petition is meritorious.

Petitioner maintains that she should have been reinstated to her former position on April 24, 2010, the date when the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081 became final and executory. Petitioner alleges that she was ready and willing to work, but the then Municipal Mayor, as well as respondent, refused to reinstate her. Petitioner further alleges that she had to file a Motion for Execution, before the CSC to implement the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081, but respondent still refused to reinstate her. Petitioner finally argues that she is entitled to back salaries because she could not be faulted for her non-reinstatement.

Respondent, in her Comment,[27] asserts that petitioner was not exonerated of the charges against her. As such, petitioner is not entitled to payment of back salaries.

In her Petitioner's Reply (to Respondents' Comment dated 7 December 2015),[28] petitioner reiterates that respondent refused to reinstate her without any justifiable ground; and that her reinstatement was unduly delayed without her fault.

Following the ruling of the Court in *City Mayor of Zamboanga v. Court of Appeals*[29] *(City Mayor of Zamboanga)*, the CA held

---

[27] *Id.* at 177-179.

[28] *Id.* at 182-185.

[29] 261 Phil. 936 (1990).

that private respondent Eustaquio C. Argana (private respondent Argana) is not entitled to back salaries because back salaries may only be ordered paid to an officer or employee if he is exonerated of the charges against him. The CA ruled that since private respondent Argana did not work during the period for which she is now claiming for her salaries, there is no legal or equitable basis for the payment of back salaries. Indeed, the Court ruled in *City Mayor of Zamboanga* that to allow private respondent Argana therein to receive back salaries would amount to rewarding him for his misdeeds and compensating him for services he did not render.[30]

In the case, the Court needs to distinguish between the period during the pendency of petitioner's appeal of her dismissal from the service until the finality of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081 and the period from the finality of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081 until her actual reinstatement.

In *Civil Service Commission v. Cruz*,[31] the Court held:

> The issue of entitlement to back salaries, for the period of suspension pending appeal, of a government employee who had been dismissed but was subsequently exonerated is settled in our jurisdiction. The Court's starting point for this outcome is the "no work-no pay" principle — public officials are only entitled to compensation if they render service. We have excepted from this general principle and awarded back salaries even for unworked days to illegally dismissed or unjustly suspended employees based on the constitutional provision that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law"; to deny these employees their back salaries amounts to unwarranted punishment after they have been exonerated from the charge that led to their dismissal or suspension.[32]

---

[30] *Id.* at 942.

[31] 670 Phil. 638 (2011).

[32] *Id.* at 646. Citations omitted.

It is settled that petitioner was not exonerated of the charges against her, but she was found guilty of a lesser offense with a lesser penalty. Thus, during the pendency of her appeal until the finality of the CA Decision in CA-G.R. SP No. 103081 on April 24, 2010, petitioner is not entitled to back salaries.

Still, from the time of the finality of the CA Decision in CA-G.R. SP No. 103081, there is no longer any pending appeal. Considering that at the time of the finality of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081, petitioner had already served her one (1) year suspension; thus she should have been immediately reinstated to her former position. The prohibition on payment of back salaries should no longer apply. To rule otherwise would make it easier to disregard a final and executory judgment of the courts and prolong its execution to the detriment of the winning party. The Court notes that as of the time of the filing of her reply, petitioner has yet to be reinstated as Municipal Accountant of the Municipal Government of Mariveles, Bataan.

It is the duty of respondent to reinstate petitioner as Municipal Accountant of the Municipal Government of Mariveles, Bataan in compliance with the final and executory decision of the CA. However, even after the finality of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081, respondent still refused to reinstate petitioner. Petitioner had to file a Motion for Execution before the CSC and litigate once again on the legality of respondent's action dropping her from the roll. Respondent's act is clearly dilatory and is intended to delay the execution of the CA Decision dated March 17, 2010 in CA-G.R. SP No. 103081.

The Court reiterates that a "judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party."[33] The Court cannot allow respondent to circumvent a final and executory judgment by her continued refusal to implement it.

---

[33] See *Lomondot, et al. v. Judge Balindong, et al.*, 763 Phil. 617, 629 (2015), citing *Villasi v. Garcia, et al.*, 724 Phil. 519, 531 (2014), further citing *Florentino v. Rivera*, 515 Phil. 494, 505 (2006).

WHEREFORE, the Court **PARTIALLY GRANTS** the petition and **MODIFIES** the Decision dated August 29, 2014 and the Resolution dated March 5, 2015 of the Court of Appeals in CA-G.R. SP No. 131907 by ordering the payment of petitioner Adelina A. Romero's back salaries from the time of the finality of the Decision dated March 17, 2010 in CA-G.R. SP No. 103081 on April 24, 2010 until her actual reinstatement.

SO ORDERED.

Leonen (*Chairperson*), *Hernando,* and *Rosario, JJ.*, concur.

Delos Santos, J., on official leave.

THIRD DIVISION

[G.R. No. 219185. November 25, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* **JOSEPHINE PONCE-PILAPIL,*** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; A PETITION FOR *CERTIORARI* IS CONFINED SOLELY TO QUESTIONS OF JURISDICTION.— Oft-repeated is the principle that petitions for *certiorari* under Rule 65 of the Rules of Court are confined solely to questions of jurisdiction. These ask whether a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. Unless the circumstances of a case qualify under established exceptions, questions of law or fact pertain to a remedy other than *certiorari*.

. . .

Likewise, the propriety and soundness of a tribunal's decision is beyond the scope of *certiorari*. Nonetheless, the RTC acted within the bounds of its jurisdiction when it decided in favor of Josephine's petition. The CA thus correctly found no reason to strike down the trial court's judgment with a grant of *certiorari.*

2. CIVIL LAW; THE FAMILY CODE; ABSENCE; JUDICIAL DECLARATION OF PRESUMPTIVE DEATH OF AN ABSENT SPOUSE; REQUISITES FOR THE DECLARATION OF PRESUMPTIVE DEATH.— Jurisprudence sets out four requisites for a grant of a petition for declaration of presumptive death under Article 41 of the Family Code: *first*, the absent spouse has been missing for

---

* Hon. Marilyn Lagura-Yap, Presiding Judge of the Regional Trial Court, Branch 55, Mandaue City was dropped as party-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code; *second*, the present spouse wishes to remarry; *third*, the present spouse has a well-founded belief that the absentee is dead; and *fourth*, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.

3. ID.; ID.; ID.; ID.; ID.; REQUIREMENT AND STANDARD OF A "WELL-FOUNDED BELIEF"; THE PRESENT SPOUSE'S BELIEF THAT THE ABSENT SPOUSE IS ALREADY DEAD MUST BE THE RESULT OF DILIGENT AND REASONABLE EFFORTS TO LOCATE THE LATTER.— The third requirement of a "well-founded belief" proves most difficult to establish in seeking to declare an absent spouse presumptively dead. While this term enjoys flexible meanings and depends heavily on the circumstances unique to each particular case, the Court in *Republic v. Orcelino-Villanueva (Orcelino-Villanueva)* has highlighted the exercise of "diligent efforts" in determining whether the present spouse's belief that the absent spouse is already dead was well-founded or not:

> The well-founded belief in the absentee's death requires the present spouse to prove that his/her belief was the result of **diligent and reasonable efforts to locate the absent spouse** and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. **It necessitates exertion of active effort (not a mere passive one). Mere absence of the spouse (even beyond the period required by law), lack of any news that the absentee spouse is still alive, mere failure to communicate, or general presumption of absence under the Civil Code would not suffice**.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE PRESENT SPOUSE'S EFFORTS IN LOCATING THE ABSENT SPOUSE BY INQUIRIES WHICH ARE NOT DONE PERSONALLY, BUT BY MERE LETTER-CORRESPONDENCE FACILITATED BY ANOTHER, DO NOT QUALIFY AS DILIGENT SEARCH.— Jurisprudential precedents demonstrate the following efforts expended by the petitioning parties therein:

. . .

All these aforecited efforts, however, had been stamped by the Court as merely passive and unexacting of the jurisprudential standards that would qualify such efforts as diligent. The particular circumstances of the present case, unfortunately, pale in comparison to and prove no better than those of the foregoing. Josephine's efforts to search for Agapito only consisted of inquiries not even done personally but by mere letter-correspondence facilitated by another person.

. . .

Withal, the pieces of evidence on record were too bare and self-serving. Mere allegation is not proof. Moreover, Josephine's acts fail to convince the Court that she indeed went out of her way to locate Agapito, and her search for Agapito's whereabouts cannot be said to have been diligently and exhaustively conducted. In all, Josephine's efforts were just too flimsy to serve as concrete basis of a well-founded belief that Agapito is indeed dead.

5. ID.; ID.; ID.; ID.; A DECLARATION OF PRESUMPTIVE DEATH CANNOT BE ISSUED WHEN THE ABSENT SPOUSE IS MERELY MISSING. — A declaration of presumptive death must be predicated upon a well-founded fact of *death*. The fact that the absent spouse is *merely missing*, no matter how certain and undisputed, will never yield a judicial presumption of the absent spouse's death. Josephine in this case only successfully established that the whereabouts of Agapito are indeterminable. As circumstances that definitely suggest Agapito's death remain to be seen, the Court cannot consider Josephine's civil status as that of a widow.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Jason Exodus T. Piquero for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the May 31, 2012 Decision[2] and the June 26, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB SP No. 02719.

The Antecedents:

Josephine Ponce-Pilapil (Josephine) sought to declare her husband, Agapito S. Pilapil, Jr. (Agapito), presumptively dead in a petition filed before the Regional Trial Court, Branch 55 of Mandaue City (RTC).[4]

The RTC set the case for initial hearing and ordered the publication of the petition in a newspaper of general circulation in the cities and province of Cebu. At the initial hearing, petitioner established the jurisdictional facts of the petition, and no opposition thereto was registered. Trial ensued. The RTC summed up the testimonies as follows:

> In support of the petition, [Josephine] testified that: She is 44 years old, married, housewife and a resident of Yati, Lilo-an, Cebu. She and [Agapito] got married in Mandaue City on June 5, 2000. Out of the union was born Juan Miguel Pilapil x x x. A few months after the marriage, which was sometime in November 2000, [Agapito] left without information where he was going. She knows of no reason why Agapito would leave her as they did not even quarrel prior to that. Insofar as she knows, her husband had a cyst in his right jaw which was getting bigger.

---

[1] *Rollo*, pp. 10-24.

[2] Id. at 26-36; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Gabriel T. Ingles and Victoria Isabel A. Paredes.

[3] Id. at 38-40; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi.

[4] CA *rollo*, p. 22.

Before their marriage, [Josephine] was introduced to Agapito by a neighbor. Agapito was from Ormoc City and came to live in Lilo-an, Cebu, only because he worked there. She knows that [Agapito's] parents are all deceased, having died from a calamity which hit Ormoc City sometime in the 1990's. With this predicament, [Josephine], after [Agapito's] disappearance, tried to look for him from [Agapito's only surviving relative], Lydia Bueno Pilapil. The latter told [Josephine] that she does not have any knowledge or idea where Agapito was, in response to her letter. She also inquired from their friends if they saw or heard from Agapito, but all answered in the negative. She honestly believes that her husband Agapito is already dead considering that more than six (6) years have lapsed without any information on his whereabouts. She filed the instant petition for purposes of declaring her husband Agapito presumptively dead so that she can remarry.

As second witness, Marites Longakit Toong, was presented and testified that: She is 44 years old, married, a public school teacher and a resident of Yati, Lilo-an, Cebu. She knows [Josephine], being a childhood friend and a neighbor. She also knows [Agapito]. Being neighbors, she knew that Agapito left or disappeared sometime in November 2000. She tried to help [Josephine] look for Agapito but, up to the present, they do not have any knowledge on his whereabouts. She even hand-carried a letter from [Josephine] addressed to Agapito's sister-in-law, Lydia Bueno Pilapil, in Ormoc City. She [met] Lydia Bueno Pilapil in Ormoc City, who also told her that she does not know where Agapito was. She also hand carried the letter-response of Lydia to [Josephine].[5]

Ruling of the Regional Trial Court:

On the basis of the evidence presented by Josephine, the RTC declared Agapito as presumptively dead, pursuant to Article 41 of the Family Code, in relation to Article 253 of the Civil Code.Josephine was found to have established the fact that Agapito has been absent for six years with his whereabouts unknown. In its February 27, 2007 Order,[6] the RTC decreed in the following manner:

---

[5] Id. at 23.

[6] Id. at 22-24.

WHEREFORE, premises considered, the petition is **GRANTED**. **AGAPITO S. PILAPIL, JR.**, is hereby declared presumptively dead.

Petitioner is directed to register a copy of this Order with the Local Civil Registrar of Mandaue City.

Furnish all parties concerned with a copy of this Order.

SO ORDERED.[7]

The Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), elevated its cause to the appellate court through a Petition for *Certiorari*[8] under Rule 65 of the Rules of Court.

Proceedings before the Court of Appeals:

The CA ruled against the Republic. While the CA afforded procedural lenience to the OSG when the latter dispensed with the filing of a motion for reconsideration of the RTC Order, it found no grave abuse of discretion on the part of the trial court. In arguing that the Order was not in accord with established jurisprudence, the Republic essentially sought to weigh and evaluate the merits of the trial court's decision to grant the petition for declaration of presumptive death. Such, according to the CA, was an improper subject of a petition for *certiorari* under Rule 65 of the Rules of Court. The CA so decreed in its assailed May 31, 2012 Decision,[9] as follows:

IN LIGHT OF ALL THE FOREGOING, the Petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure assailing the February 27, 2007 Order of the Regional Trial Court, Branch 55, Mandaue City ordering the presumptive death of Agapito S. Pilapil, Jr., is DISMISSED.

SO ORDERED.[10]

---

[7] Id. at 24.

[8] Id. at 2-21.

[9] *Rollo*, pp. 26-36.

[10] Id. at 36.

The CA denied[11] the Republic's Motion for Reconsideration. Thus, this Petition for Review on *Certiorari* by the Republic before this Court.

Petitioner's Arguments:

The Republic maintains that Josephine failed to prove that she had a well-founded belief that Agapito was already dead, and that she exerted the required amount of diligence in searching for her missing husband. Despite this and over prevailing jurisprudence on the matter, the RTC granted Josephine's petition for declaration of presumptive death. This was allegedly indicative of caprice and arbitrariness on the part of the trial court which, the OSG claims, the CA should have reversed on *certiorari*.[12]

Respondent's Position:

In her Comment,[13] Josephine asserts the lack of sufficient showing that the RTC exercised its discretion whimsically or arbitrarily by reason of passion, prejudice, or personal hostility for it to be reversed by the CA. She also posits that the CA was correct in dismissing the OSG's Petition for *Certiorari*, which called for a review of the trial court's appreciation of the evidence and advanced mere errors of judgment which are beyond the ambit of *certiorari* proceedings.

Issue:

The Republic, through the OSG, raises the issue of whether the CA erred in finding no grave abuse of discretion on the part of the RTC and in affirming the RTC Order that granted Josephine's petition for declaration of presumptive death of Agapito, her husband.

Our Ruling

The appeal is meritorious.

---

[11] Id. at 38-40.

[12] *Rollo*, pp. 14-18.

[13] Id. at 89-96.

Certiorari answers only questions of jurisdiction:

Oft-repeated is the principle that petitions for *certiorari* under Rule 65 of the Rules of Court are confined solely to questions of jurisdiction.[14] These ask whether a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.[15] Unless the circumstances of a case qualify under established exceptions,[16] questions of law or fact pertain to a remedy other than *certiorari*.

In assailing the appreciation of the evidence by the RTC and its application of jurisprudence, the OSG, in its petition for *certiorari* before the CA, was in effect seeking a review of the RTC's findings and conclusions. The OSG has not offered the CA any exceptional circumstance that would allow a factual review in a *certiorari* proceeding.

Likewise, the propriety and soundness of a tribunal's decision is beyond the scope of *certiorari*. Nonetheless, the RTC acted

---

[14] *Century Iron Works, Inc. v. Banas*, 711 Phil. 576, 584-586 (2013).

[15] Id. at 586.

[16] In *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 212-213 (2005), the Supreme Court recognized several such exceptions: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Also cited in *Century Iron Works, Inc. v. Banas*, supra, at 585.

within the bounds of its jurisdiction when it decided in favor of Josephine's petition. The CA thus correctly found no reason to strike down the trial court's judgment with a grant of *certiorari*.

Even so, the courts below should not have declared Agapito presumptively dead.

Respondent failed to demonstrate full compliance with Article 41 of the Family Code.

Pivotal to the resolution of this case is the application of Article 41 of the Family Code:

> Article 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
>
> For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Jurisprudence sets out four requisites for a grant of a petition for declaration of presumptive death under Article 41 of the Family Code: *first*, the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code; *second*, the present spouse wishes to remarry; *third*, the present spouse has a well-founded belief that the absentee is dead; and *fourth*, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.[17]

---

[17] *Republic v. Catubag*, G.R. No. 210580, April 18, 2018; *Republic v. Sareñogon*, 780 Phil. 738 (2016); *Republic v. Cantor*, 723 Phil. 114 (2013).

The third requirement of a "well-founded belief" proves most difficult to establish in seeking to declare an absent spouse presumptively dead. While this term enjoys flexible meanings and depends heavily on the circumstances unique to each particular case,[18] the Court in *Republic v. Orcelino-Villanueva (Orcelino-Villanueva)*[19] has highlighted the exercise of "diligent efforts" in determining whether the present spouse's belief that the absent spouse is already dead was well-founded or not:

> The well-founded belief in the absentee's death requires the present spouse to prove that his/her belief was the result of **diligent and reasonable efforts to locate the absent spouse** and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. **It necessitates exertion of active effort (not a mere passive one). Mere absence of the spouse (even beyond the period required by law), lack of any news that the absentee spouse is still alive, mere failure to communicate, or general presumption of absence under the Civil Code would not suffice.** The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, whether the absent spouse is still alive or is already dead.[20] (Emphasis supplied and citations omitted.)

Jurisprudential precedents demonstrate the following efforts expended by the petitioning parties therein:

In *Republic v. Catubag*,[21] the present spouse, who was working abroad, received news that his wife left their house and never returned. Worried for his wife and children, the present spouse flew back to the Philippines on an emergency vacation. The present spouse claimed to have inquired about the absent spouse's

---

[18] Id.

[19] 765 Phil. 324 (2015).

[20] Id. at 329-330.

[21] Supra, note 21.

whereabouts with friends and relatives and in places where they had lived and where the absent spouse was born. The present spouse also availed of the assistance of *Bombo Radyo Philippines*, a well-known radio broadcast network in the country, to publicize the disappearance of the missing spouse. He likewise sought information from various hospitals and funeral parlors, but still failed to locate his missing wife.

In *Republic v. Sareñogon*,[22] the spouses were both overseas Filipino workers. Only months into their marriage but away from each other, the husband lost all communication with his wife. He also failed to contact his wife's parents, who had allegedly left their residence that was last known to the husband. When his contract expired, he returned home. His ensuing inquiries as to his wife's whereabouts from his wife's relatives and friends, however, yielded negative results.

In *Republic v. Cantor*,[23] the husband left the conjugal home after a violent quarrel with the wife, and such was allegedly the last time the latter had heard anything from the former. During the four years that the husband had been missing, the wife had asked her husband's family, neighbors, and friends, who all offered only their lack of knowledge concerning his whereabouts. The wife also claimed that she had made sure to check patients' directories in the hospitals she went to, under the hope of finding her husband.

Also in *Orcelino-Villanueva*,[24] the present spouse therein returned to the Philippines from working overseas to search for her husband who allegedly had been missing for 15 years. She inquired with her husband's relatives and their common friends, who all gave her negative responses regarding her missing husband's whereabouts.[25]

---

[22] Id.

[23] Id.

[24] *Supra*, note 19.

[25] Id.

All these aforecited efforts, however, had been stamped by the Court as merely passive and unexacting of the jurisprudential standards that would qualify such efforts as diligent. The particular circumstances of the present case, unfortunately, pale in comparison to and prove no better than those of the foregoing. Josephine's efforts to search for Agapito only consisted of inquiries not even done personally but by mere letter-correspondence facilitated by another person.

Moreover, Josephine's pursuit of Agapito is evidently lackadaisical based on the following circumstances:

First, her personal knowledge of a growing cyst on Agapito's jaw does not produce an inevitable conclusion that the latter was already suffering from some terminal illness prior to his disappearance. No medical document or expert testimony on Agapito's physical ailment was submitted by Josephine for the courts' assessment to prove such circumstance.

Second, while Josephine attempted to find Agapito, her supposed informers and their information were unreliable. The "friends" whom Josephine allegedly contacted were unnamed. The letters written by Josephine and Agapito's sister, Lydia Bueno Pilapil (Lydia), were never presented as evidence before the court. Lydia did not even take the witness stand to testify to the veracity of the contents of her purported letter as alleged by Josephine. Marites Longakit Toong (Marites), Josephine's letter-courier to Lydia, did appear as a witness before the trial court; however, the truth behind Marites' statements that Lydia had told her of Agapito's absence remain hearsay and unconfirmed.

Third, Josephine could have resorted to police assistance in seeking out her husband. While the act of seeking investigative aid from authorities will not automatically secure a positive conclusion of a "diligent search,"[26] official documents could still have been procured to attest that she had assiduously investigated the disappearance of Agapito. Josephine never did

---

[26] See *Republic v. Cantor*, supra, note 17.

so. This further weakened the seriousness of her efforts to find her missing husband and blurred the possibility of the latter's death.

Withal, the pieces of evidence on record were too bare and self-serving. Mere allegation is not proof. Moreover, Josephine's acts fail to convince the Court that she indeed went out of her way to locate Agapito, and her search for Agapito's whereabouts cannot be said to have been diligently and exhaustively conducted. In all, Josephine's efforts were just too flimsy to serve as concrete basis of a well-founded belief that Agapito is indeed dead.

A declaration of presumptive death must be predicated upon a well-founded fact of *death*. The fact that the absent spouse is *merely missing*, no matter how certain and undisputed, will never yield a judicial presumption of the absent spouse's death. Josephine in this case only successfully established that the whereabouts of Agapito are indeterminable. As circumstances that definitely suggest Agapito's death remain to be seen, the Court cannot consider Josephine's civil status as that of a widow.

WHEREFORE, the Petition is **GRANTED**. The May 31, 2012 Decision and the June 26, 2015 Resolution of the Court of Appeals affirming the February 27, 2007 Order of the Regional Trial Court, Branch 55 of Mandaue City are **REVERSED and SET ASIDE**. Josephine Ponce-Pilapil's petition to declare Agapito S. Pilapil, Jr. as presumptively dead is **DISMISSED**.

SO ORDERED.

Leonen (*Chairperson*), *Inting*, and *Rosario, JJ.*, concur.

Delos Santos, J., on official leave.

THIRD DIVISION

[G.R. No. 231062. November 25, 2020]

JORGE DE OCAMPO, heirs of the late NAPOLEON DE OCAMPO, namely: ROSARIO DE OCAMPO, JOSE DE OCAMPO, PABLO DE OCAMPO, JAIME DE OCAMPO, PEDRITO DE OCAMPO, JOSEPH DE OCAMPO, NAPOLEON DE OCAMPO, JR., NORMA DE OCAMPO, PURITA DE OCAMPO, FLORENCE DE OCAMPO, CORAZON DE OCAMPO, and ROSEMARIE DE OCAMPO, *Petitioners, v.* **JOSE OLLERO, GENOVEVA OLLERO, and CONCEPCION OLLERO-GUECO,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; WHEN THE REASONINGS OR FINDINGS OF THE LOWER COURTS VARY, THE SUPREME COURT MAY TAKE A CLOSER LOOK THEREON.— As a rule, the judicial review under Rule 45 of the Rules of Court excludes factual issues as only pure questions of law may be raised in a petition for review on *certiorari* and the Court generally abides by the unanimous conclusions of the lower courts in a given legal controversy. In the instant case, however, while the RTC and the CA concur in ruling for respondents, their reasonings vary such that the Court deems it necessary to take a closer look on their findings to arrive at a just resolution of the issues on hand.

2. CIVIL LAW; PROPERTY; OWNERSHIP; MODES OF ACQUIRING OWNERSHIP.— Under Article 712 of the Civil Code, there are generally two classifications of the modes of acquiring ownership, namely, the original mode, that is, "through occupation, acquisitive prescription, law or intellectual creation," and derivative mode "through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*."

3. ID.; ID.; ID.; ID.; OCCUPATION; OCCUPATION, NO MATTER HOW LONG, DOES NOT VEST TITLE UNLESS IT IS COUPLED WITH HOSTILITY TOWARD THE TRUE OWNER.— [A]s pointed out by the RTC and the CA, petitioners cannot acquire the subject property by mere occupation. Let it be emphasized that unless occupation is coupled with hostility toward the true owner, occupation no matter how long will not vest title. Verily, in the absence of their adverse possession of the property, even if petitioners had declared it for taxation purposes, is not sufficient to establish ownership.

4. ID.; CONTRACTS; SALES; IN A CONTRACT OF SALE, THERE MUST BE A MEETING OF THE MINDS UPON THE OBJECT OF THE CONTRACT AND UPON THE PRICE; THE MERE INCLUSION OF THE PHRASE "FOR A VALUABLE CONSIDERATION" DOES NOT BY ITSELF PROVIDE FOR THE PURPORTED AGREED PRICE FOR THE PROPERTY.— [C]ontrary to petitioners' assertions, the stipulations in the deed of conveyance do not amount to a sale. To stress, in a contract of sale, one of the parties obligates himself or herself to transfer the ownership of and to deliver a determinate thing while the other party binds his or herself to pay a price certain in money or its equivalent. While petitioners claimed that the supposed sale was for a price of US$1,000.00, the deed did not indicate this circumstance. Additionally, the mere inclusion of the phrase "for a valuable consideration" does not by itself provide for the purported agreed price for the property.

Let it be underscored too that in a contract of sale, it is primordial that there is a meeting of the minds upon the object of the contract and upon the price. Consent is shown by the meeting of the offer and the acceptance of the thing and the cause which are to constitute the contract. Here, there is no showing of clear intent to sell and of price certain. Petitioners also failed to prove that payment was made for the subject property. Thus, their contention that Carmen sold the property to Napoleon and Rosario is untenable.

5. ID.; ID.; DONATION; A DEED OF CONVEYANCE CONTAINING A GENERAL STATEMENT "GRANT," WITHOUT ANY INDICATION OF AN INTENTION TO DONATE, IS NOT A DONATION.— [T]he Court does not

find that the deed of conveyance embodied a donation. Notably, the subject deed only stated that Carmen "grant" to Napoleon and Rosario "as joint tenants" a property in Tubao, La Union. It is a general statement without indication of any intention to donate on the part of Carmen, aside from the fact that Napoleon and Rosario did not manifest any acceptance and no witnesses signed the supposed deed of donation.

. . . [I]n the present case, no effective transfer of rights can be gleaned from the deed of conveyance as it only states that Carmen "granted" to Napoleon and Rosario a real property in Tubao, La Union.

6. ID.; DAMAGES; MORAL DAMAGES, ATTORNEY'S FEES, AND COST ARE AWARDED TO COMPENSATE FOR THE DAMAGES CAUSED BY THE FRAUDULENT WITHHOLDING OF PROPERTY.— [T]he Court sustains the awards of moral damages, attorney's fees and cost as they were supported by evidence as underscored by the RTC in this wise:

> The [respondents,] being fraudulently withheld of their mother's property are entitled to bring to the attention of the court to seek relief through this action. Accordingly, they should be compensated to the damages caused to them which they have duly proven.
>
> This court understands the [respondents'] emotional suffering arising from the act of their relative Napoleon de Ocampo. As testified to by [respondent Jose], because of this case, he had sleepless nights and lost his appetite. To compensate his sufferings, he asked for the amount of ₱20,000.00 which the Count finds reasonable. Thereby, to assuage [respondents'] turmoil, the court awards to them ₱20,000.00 as reasonable moral damages. As regards the payment of attorney's fees, [respondent Jose] claimed he paid their lawyer the amount of ₱20,000.00 and an additional ₱2,000.00 per appearance of their lawyer, which the Court deems it reasonable under the circumstances.
> x x x

APPEARANCES OF COUNSEL

Cabato and Salazar Law Office for petitioners.
Angeline Tumaneng-Oribello for respondents.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure[1] assailing the Decision[2] dated June 6, 2016 of the Court of Appeals (CA) which dismissed the appeal; and the Resolution[3] dated February 22, 2017 denying the motion for reconsideration in CA-G.R. CV No. 102866.

The Antecedents

The subject matter of the case is a parcel of land with an area of 738 square meters (sq. m.), located in Poblacion, Tubao, La Union and covered by Tax Declaration No. 00002[4] in the name of the late Francisco Alban (Francisco) with Napoleon De Ocampo (Napoleon) as its named administrator.[5]

On March 5, 1926, Francisco adopted Susana Felipa Carmen de Ocampo (Carmen), the sister by blood of Napoleon. Consequently, Carmen adopted the family name "Alban" until she married Marcos Ollero on December 23, 1929. Later on, Francisco donated the subject property to Carmen as evidenced by a deed of donation dated November 10, 1930.[6]

On April 27, 1998, Carmen died in Chicago, Illinois. Thereafter, her children, Jose, Genoveva, and Concepcion, all surnamed Ollero (respondents) discovered that Napoleon appropriated to himself the subject property through an affidavit

---

[1] *Rollo*, pp. 11-39.

[2] *Id.* at 42-52; penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario (now a member of the Court) and Marie Christine Azcarraga-Jacob, concurring.

[3] *Id.* at 55-56.

[4] Varied in many parts of the *rollo*.

[5] *Rollo*, pp. 43, 114.

[6] *Id.* at 14, 43, 114.

of adjudication dated May 22, 1997. In the affidavit, Napoleon claimed that he was the sole legal heir of the late Francisco. By reason of the adjudication, a new tax declaration was issued in the names of Napoleon and his brother, Jorge De Ocampo (Jorge).[7]

Claiming that they were deprived of title over the subject property, respondents filed a case for recovery of ownership, reconveyance and damages against the heirs of the late Napoleon and Jorge (petitioners).[8]

For their part, petitioners countered that in 1944, Napoleon married Rosario Suguitan (Rosario). During the occasion, Carmen told Napoleon and Rosario to occupy the subject land. Resultantly, the latter built their home on the property.[9]

Petitioners stressed that respondents never resided in the subject property. They declared that when Carmen got married, she resided in Malate, Manila with respondents. Meanwhile, after college, respondents Concepcion and Genoveva migrated to the United States of America and Carmen later on joined them. Further, petitioners argued that during her lifetime, neither Carmen nor respondents (her children) caused the cancellation of Tax Declaration No. 00002 in the name of Francisco even if Francisco already donated the property to Carmen in 1930. They also insisted that on December 11, 1984, Carmen executed a deed of conveyance over her real property located in Tubao, La Union in favor of Napoleon and Rosario.[10]

Ruling of the Regional Trial Court (RTC)

On April 21, 2014, Branch 32, RTC, Agoo, La Union rendered a Decision,[11] the dispositive portion of which reads:

---

[7] *Id.* at 43, 115.

[8] *Id.* at 115.

[9] *Id.*

[10] *Id.* at 115-116.

[11] *Id.* at 114-122; penned by Judge Rose Mary R. Molina-Alim.

IN VIEW OF THE FOREGOING, after a thorough examination of all the evidence adduced by the parties as well as the testimonies of their witnesses, judgment is hereby rendered in FAVOR of the plaintiffs and AGAINST defendants.

1. DECLARING the Affidavit of Adjudication executed by Napoleon de Ocampo on May 22, 1997 as void. As a consequence, therefor, the property subject matter of this case should be reverted to its original owner Francisco Alban, as gleaned from tax declaration No. 002;

2. ORDERING defendants to pay to the plaintiffs the amount of PhP20,000.00 as moral damages; PhP20,000.00 as attorney's fees and the additional amount of PhP2,000.00 per appearance of their lawyer in Court and to pay the costs of suit.

SO ORDERED.[12]

The RTC ratiocinated that per the testimonies of the two heirs of Napoleon, it was clear that Carmen never intended to deprive herself of ownership over the subject land when she allowed Napoleon and Rosario to occupy it. It decreed that Napoleon's possession was merely permissive underscoring that possession arising from the mere tolerance of the owner was not sufficient for the purpose of acquisitive prescription.[13]

The RTC further noted that petitioners themselves admitted that Napoleon was not a legal heir of Francisco such that his (Napoleon's) affidavit of adjudication was actually perjurious. "By itself, the assertions in the affidavit of adjudication is false and consequently, the affidavit is a nullity."[14]

The RTC also ruled that payment of realty taxes did not vest ownership to petitioners in the absence of an adverse possession over the subject property. It added that at most, petitioners were usufructuaries with the right to enjoy and the corresponding obligation to preserve the property.[15]

---

[12] *Id.* at 122.

[13] *Id.* at 118.

[14] *Id.* at 121.

[15] *Id.* at 120.

Ruling of the CA

On June 6, 2016, the CA dismissed the appeal and affirmed the RTC Decision, except as to the latter's finding of usufruct.[16]

The CA elucidated that by virtue of the deed of donation executed by Francisco to Carmen, Carmen became the owner of the subject property. This being the case, Napoleon's eventual affidavit of adjudication was invalid because he executed it *not* as an heir of Carmen, but as the alleged heir of Francisco. It stressed that during the execution of the affidavit of Napoleon, Carmen was already the owner of the property and Francisco could not anymore donate it to Napoleon. It also held that petitioners' occupation of the property for years could not ripen to ownership since mere occupation by itself was not a recognized mode of acquiring ownership or other real rights.[17]

The CA further held that the deed of conveyance supposedly executed by Carmen in favor of Napoleon and his wife was one of donation. It was, however, not valid as it did not comply with the requirements of a donation. According to the CA, there was no showing that Napoleon accepted and no witnesses signed the deed.[18] The CA ratiocinated that it was only a simple case of tolerance when Carmen authorized Napoleon to occupy the property in dispute.

Later, the CA denied petitioners' motion for reconsideration which prompted them to file the instant petition raising the following issues:

I.

THE [CA] ERRED IN FINDING THAT THE DEED OF CONVEYANCE EXECUTED BY CARMEN IS A DONATION[.]

II.

THE [CA] ERRED IN FINDING THAT THE PETITIONERS HAD NO "JUST TITLE" OVER THE SUBJECT PROPERTY[.]

---

[16] *Id.* at 51.

[17] *Id.* at 47-48.

[18] *Id.* at 45-47.

III.

THE [CA] ERRED IN AWARDING DAMAGES IN FAVOR OF RESPONDENTS[.]

IV.

THE [CA] ERRED IN NOT ISSUING AN ADJUDICATION UPON THE MERITS ON THE NATURE OF THE IMPROVEMENTS BUILT ON THE SUBJECT LAND[.][19]

Petitioners' Arguments

Petitioners insist that the RTC erred in disregarding the contract of sale between Carmen, on one hand, and Napoleon and Rosario, on the other hand; while the CA erroneously found their transaction to be one of donation.

According to petitioners, the deed of conveyance between Carmen, and Napoleon and Rosario was for a valuable consideration in the amount of US$1,000.00; and Carmen received the amount as the deed indicated that it was executed "for a valuable consideration." They likewise assert that because the deed of conveyance was executed on December 11, 1984, then they already acquired vested right over the property after 10 years from execution of the deed of conveyance.

Petitioners also maintain that since 1944, Napoleon and Rosario had occupied the property in the concept of an owner, and believed that Carmen could transfer it to them. They contend that based on the possession and occupation of Napoleon and Rosario alone, they acquired title over the subject land.

At the same time, petitioners argue that they should not be held liable to pay moral damages arising from the act of Napoleon of executing the affidavit of adjudication without their knowledge and consent. They further posit that the award of attorney's fees is unwarranted in the absence of any circumstance under Article 2208 of the Civil Code of the Philippines (Civil Code).

Finally, petitioners contend that they introduced improvements on the subject property with the belief that they owned the

[19] *Id.* at 22.

property. They, thus, insist that these improvements should be treated under Article 448 of the Civil Code on builders and planters in good faith.

Respondents' Arguments

Respondents counter that the instant petition raises no question of law which is sufficient reason for the Court to deny it. They also stress that the uniform findings of the RTC and the CA that the deed between Carmen, and Napoleon and Rosario was void must be respected and accorded great weight and even finality by the Court.

Respondents also argue that petitioners have no just title over the property either by the deed supposedly executed by Carmen or by Napoleon's affidavit of adjudication. They pointed out that in fact, the affidavit of adjudication indicated that Napoleon inherited the property from Francisco even if the latter had already donated it to Carmen.

Our Ruling

As a rule, the judicial review under Rule 45 of the Rules of Court excludes factual issues as only pure questions of law may be raised in a petition for review on *certiorari* and the Court generally abides by the unanimous conclusions of the lower courts in a given legal controversy. In the instant case, however, while the RTC and the CA concur in ruling for respondents, their reasonings vary such that the Court deems it necessary to take a closer look on their findings to arrive at a just resolution of the issues on hand.[20]

Moreover, the Court observes that in the pursuit of their case, petitioners heavily relied on the deed of conveyance supposedly executed by Carmen in favor of Napoleon and Rosario and cited its portions as follows:

---

[20] See *Estate of Margarita D. Cabacungan v. Laigo, et al.*, 671 Phil. 132, 146 (2011).

"Deed"

FOR A VALUABLE CONSIDERATION, I, CARMEN L. DE OCAMPO, of legal age, widow of the late Marcos Ollero, presently residing at x x x, the first party, hereby grant to NAPOLEON L. DE OCAMPO and ROSARIO S. DE OCAMPO, both of legal age, husband and wife, respectively, as joint tenants, and presently residing at x x x, the second party, all that real property situated in the Municipality of Tubao, Province of La Union, Philippines, bounded and described as follows:

> Bounded on the North by Francisco Zandueta; on the East by Carino para Aringay; on the South by Florencio Baltazar; and on the West by Calle Sta. Ana; containing an area of 825 square meters approximately; and including the building and all other improvements thereon.[21]

According to petitioners, Carmen sold to their predecessors-in-interests (Napoleon and Rosario) the subject property for $1,000.00. They fault the RTC in disregarding the contract of sale and argued that the CA erred in finding that the contract was an invalid donation for lack of acceptance from Napoleon and absence of witnesses.

Under Article 712 of the Civil Code, there are generally two classifications of the modes of acquiring ownership, namely, the original mode, that is, "through occupation, acquisitive prescription, law or intellectual creation," and derivative mode "through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*."[22]

Here, the face of the deed of conveyance does not embody any of the effective modes of transferring ownership to Napoleon and Rosario which, in turn would vest title to petitioners, their successors-in-interest. Particularly, the deed failed to show any intention on the part of Carmen to sell or even to donate the property in dispute to Napoleon and Rosario.

---

[21] *Rollo*, pp. 80, 250.

[22] *Heirs of Jose Peñaflor v. Heirs of Artemio and Lydia Dela Cruz*, 816 Phil. 324, 340 (2017), citing *Acap v. CA*, 321 Phil. 381, 390 (1995).

First, contrary to petitioners' assertions, the stipulations in the deed of conveyance do not amount to a sale. To stress, in a contract of sale, one of the parties obligates himself or herself to transfer the ownership of and to deliver a determinate thing while the other party binds his or herself to pay a price certain in money or its equivalent.[23] While petitioners claimed that the supposed sale was for a price of US$1,000.00, the deed did not indicate this circumstance. Additionally, the mere inclusion of the phrase "for a valuable consideration" does not by itself provide for the purported agreed price for the property.

Let it be underscored too that in a contract of sale, it is primordial that there is a meeting of the minds upon the object of the contract and upon the price. Consent is shown by the meeting of the offer and the acceptance of the thing and the cause which are to constitute the contract.[24] Here, there is no showing of clear intent to sell and of price certain. Petitioners also failed to prove that payment was made for the subject property. Thus, their contention that Carmen sold the property to Napoleon and Rosario is untenable.

Second, the Court does not find that the deed of conveyance embodied a donation. Notably, the subject deed only stated that Carmen "grant" to Napoleon and Rosario "as joint tenants" a property in Tubao, La Union. It is a general statement without indication of any intention to donate on the part of Carmen, aside from the fact that Napoleon and Rosario did not manifest any acceptance and no witnesses signed the supposed deed of donation.

In the *Heirs of Jose Peñaflor v. Heirs of Artemio and Lydia Dela Cruz*,[25] the Court decreed that the deed of waiver and

---

[23] Article 1458, Civil Code of the Philippines provides:

ARTICLE 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

[24] See *Heirs of Spouses Intac v. Court of Appeals, et al.*, 697 Phil. 373, 383 (2012).

[25] *Heirs of Jose Peñaflor v. Heirs of Artemio and Lydia Dela Cruz*, *supra* note 22.

transfer of possessory rights in favor of therein respondents' predecessor-in-interest was *not* an effective mode of transferring ownership as it only revealed that the owner purportedly "waived, renounced, transferred, and quitclaimed all her rights" over the disputed property therein. In the same token, in the present case, no effective transfer of rights can be gleaned from the deed of conveyance as it only states that Carmen "granted" to Napoleon and Rosario a real property in Tubao, La Union.

In fine, in the absence of the elements of any of the effective mode of transferring ownership, the Court cannot sustain the argument that Carmen transferred her title over the subject property to Napoleon and Rosario.

The Court also notes that both the RTC and the CA declared that the subject property pertained to a realty with an area of 738 sq. m. and covered by Tax Declaration No. 002 in the name of Francisco. A reading, however, of the deed of conveyance indicated a real property with an area of 825 sq. m. which pertained to a property different from the subject matter of the case.

Moreover, as pointed out by the RTC and the CA, petitioners cannot acquire the subject property by mere occupation. Let it be emphasized that unless occupation is coupled with hostility toward the true owner, occupation no matter how long will not vest title. Verily, in the absence of their adverse possession of the property, even if petitioners had declared it for taxation purposes, is not sufficient to establish ownership.[26] At the same time, their claim of ownership over the improvements thereon remained unsubstantiated and thus, without merit.

Finally, the Court sustains the awards of moral damages, attorney's fees and cost as they were supported by evidence as underscored by the RTC in this wise:

The [respondents,] being fraudulently withheld of their mother's property are entitled to bring to the attention of the court to seek

---

[26] *Cequeña v. Bolante*, 386 Phil. 419, 431 (2000) citing *De Luna v. Court of Appeals*, 287 Phil. 298, 303-304 (1992).

relief through this action. Accordingly, they should be compensated to the damages caused to them which they have duly proven.

This court understands the [respondents'] emotional suffering arising from the act of their relative Napoleon de Ocampo. As testified to by [respondent Jose], because of this case, he had sleepless nights and lost his appetite. To compensate his sufferings, he asked for the amount of PhP20,000.00 which the Count finds reasonable. Thereby, to assuage [respondents'] turmoil, the court awards to them PhP20,000.00 as reasonable moral damages. As regards the payment of attorney's fees, [respondent Jose] claimed he paid their lawyer the amount of Php20,000.00 and an additional Php2,000.00 per appearance of their lawyer, which the Court deems it reasonable under the circumstances. x x x[27]

WHEREFORE, the petition is **DENIED**. The Decision dated June 6, 2016 and the Resolution dated February 22, 2017 of the Court of Appeals in CA-G.R. CV No. 102866 are hereby **AFFIRMED**.

SO ORDERED.

Leonen (*Chairperson*), *Hernando*, *Carandang*,[*] and *Lazaro-Javier*,[**] *JJ.*, concur.

---

[27] *Rollo*, p. 121.

[*] Designated additional Member per Raffle dated November 11, 2020.

[**] Designated additional Member per Raffle dated November 25, 2020.

SECOND DIVISION

[G.R. No. 231936. November 25, 2020]

FIL-ESTATE PROPERTIES, INC., *Petitioner, v.* **HERMANA REALTY, INC.,** *Respondent*.

SYLLABUS

1. CIVIL LAW; CONTRACTS; CONTRACT TO SELL; UPON FULL PAYMENT OF THE PURCHASE PRICE, A CONTRACT TO SELL IS CONVERTED TO AN ABSOLUTE SALE, AND THE BUYER IS ENTITLED TO THE EXECUTION OF A DEED OF ABSOLUTE SALE.— A contract to sell has been defined as "a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds itself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price." In a contract to sell, "ownership is retained by the seller and is not to pass until the full payment of the price." Consequently, once the buyer has paid the purchase price in full, the contract to sell is converted to an absolute sale and the buyer has the right to demand the execution of a Deed of Absolute Sale in its favor.

Here, there is no question that HRI has paid in full the contract price in the amount of ₱20,998,400.00. There is no question either that by operation of law, HRI as the buyer has become rightfully entitled to the execution of a Deed of Absolute Sale in its favor.

2. ID.; ID.; ID.; LOCAL GOVERNMENT CODE (LGC); IF THE CONTRACT TO SELL IS A PRIVATE DOCUMENT, THE BUYER HAS THE RIGHT TO DEMAND THE EXECUTION OF A NOTARIZED DEED OF ABSOLUTE SALE.— In ***Cenido v. Spouses Apacionado,*** the Court ruled that contrary to petitioner's claim, the "*Pagpapatunay*" is a valid contract of sale despite being unnotarized since under Article 1358, a private document, though not reduced to a public one, remains to be valid and is merely unenforceable. So that after the existence of the contract has been admitted, a party

to the sale, if he or she is so minded, has the right to compel the other party to execute the proper document following Article 1357 of the Civil Code.

Section 135 of the Local Government Code (LGC) further speaks of the requirements for registration of deeds on transfer of real property and the corresponding duty of notaries public who notarized the deeds, . . .

On the strength of Article 1357 of the Civil Code and relevant jurisprudence, in relation to Section 135 of the LGC, therefore, HRI has the right to compel FEPI to execute a notarized Deed of Absolute Sale in its favor for purposes of registration.

3. ID.; ID.; ID.; ID.; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); PROOF OF PAYMENT OF TAXES AND FEES IS AMONG THE CONDITIONS *SINE QUA NON* TO THE TRANSFER OF TITLE.— Under Section 135 of the LGC, proof of payment of taxes and fees is a requirement before the Register of Deeds may initiate the transfer of title over a property, . . .

Here, HRI recognizes its obligation to pay the taxes and registration expenses as buyer of the condominium unit pursuant to paragraph 4 (b) of the Contract to Sell. It also does not dispute the common fact that it needs to pay the relevant taxes and fees for registration of a new title under its name.

4. ID.; ID.; ID.; ID.; ID.; AFTER FULL PAYMENT OF THE PURCHASE PRICE, THE BUYER HAS THE RIGHT TO THE OWNER'S DUPLICATE CERTIFICATE OF TITLE SO AS TO CAUSE THE REGISTRATION OF A NEW TITLE.— The only thing HRI demands from FEPI, which the latter has persistently refused to deliver, is copy of the owner's duplicate certificate of title on the premise that HRI must first present proof that it had already paid the required taxes and fees.

FEPI is mistaken.

Section 41 Presidential Decree No. 1529, otherwise known as the "Property Registration Decree," provides:

> **Section 41.** *Owner's duplicate certificate of title*. The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. . . .

Section 53 of the same law expounds:

> **Section 53.** *Presentation of owner's duplicate upon entry of new certificate.* No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, . . .

Thus, it is clear that for purposes of registration of any voluntary transactions before the Register of Deeds and the subsequent issuance of a new certificate of title, the owner's duplicate copy of the certificate of title must be surrendered by the parties to the Register of Deeds.

To emphasize, upon HRI's full payment of the purchase price, not only has it acquired the right to a notarized Deed of Absolute Sale but the right as well to the owner's duplicate CCT. For without these documents, HRI may not possibly cause the registration of a new title under its name.

5. ID.; ID.; ID.; SALE OF SUBDIVISION LOTS AND CONDOMINIUMS (P.D. NO. 957); THE OWNER OR DEVELOPER HAS THE OBLIGATIONS TO REGISTER THE FINAL DEED OF SALE AND TO DELIVER THE OWNER'S DUPLICATE CERTIFICATE OF TITLE TO THE BUYER FOR PURPOSES OF TRANSFER AND REGISTRATION.— The registration of the final deed of sale here is the obligation of FEPI under Section 17 [of PD 957]. On the other hand, issuance of title under Section 25 should be construed to mean delivery by FEPI of the owner's duplicate copy of the CCT, again for purposes of causing the registration of the property in the buyer's name.

As it was, FEPI violated both provisions of law. Not only did it fail to register the deed of absolute sale before the Register of Deeds, it also refused to deliver to HRI the owner's duplicate copy of the CCT.

Notably, FEPI's obligations to register the final deed of sale (Section 17) and deliver the owner's duplicate copy of the CCT (Section 25) are distinct from the obligation of HRI, as buyer, to legally process the transfer of the CCT in its name as the now registered owner.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Gargantiel Ilagan & Atanante for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

On October 11, 1997, Jose C. Alvarez, chairperson of respondent Hermana Realty, Inc. (HRI), placed an option to purchase one (1) condominium unit in Fil-Estate Properties, Inc.'s (FEPI) West Tower Condominium Corporation, denominated as "Ground Retail Unit B, West Tower."[1]

On March 20, 2000, FEPI and HRI executed a contract to sell the unit for ₱20,998,400.00. Following HRI's full payment,[2] FEPI executed an undated and unnotarized Deed of Absolute Sale in favor of HRI pending the latter's transmittal to the former of the amount for payment of the Documentary Stamp Tax (DST) and other taxes on the sale and a final agreement with the Makati City Assessor's Office on the valuation cost of the common areas and individual units of the condominium building for real estate taxation purposes.[3]

HRI asserted though that upon full payment of the purchase price, it became rightfully entitled to the execution of an absolute deed of sale in its favor and delivery of the owner's duplicate copy of the Condominium Certificate of Title (CCT). FEPI's refusal to perform its obligation caused Century Properties, Inc. (CPI) to withdraw its offer to buy from HRI the condominium unit for ₱24,500,000.00.[4]

---

[1] *Rollo*, p. 37.

[2] *Id.*

[3] *Id.* at 13-14.

[4] *Id.* at 37.

Consequently, HRI filed with the Housing and Land Use Regulatory Board Expanded National Capital Region Field Office (HLURB-ENCRFO) a complaint against FEPI for specific performance with damages and attorney's fees, docketed as HLURB Case No. REM-A-020401-0052.

After due proceedings, the HLURB-ENCRFO ruled in favor of HRI under Decision dated June 11, 2001, *viz.*:[5]

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered ordering respondent FEPI the following:

1. To immediately execute a dated and notarized Deed of Absolute Sale covering Ground Floor Retail B West Tower Condominium in favor of the herein complainant and deliver the corresponding CCT in complainant's name;

2. To pay complainant the following:

   a. Actual Damages of ₱3,501,400.00;

   b. Exemplary Damages of ₱50,000.00;

   c. Attorney's Fees of ₱50,000.00;

   d. The costs of the suit.

3. To pay this office an administrative fine of ₱10,000.00 for violation of Sections 17 and 25 in relation to Section 38 of [Presidential Decree (P.D.) No. 957].

IT IS SO ORDERED.[6]

On FEPI's appeal, the HLURB Board of Commissioners, through its Decision dated June 24, 2004, affirmed with modification the HLURB-ENCRFO ruling. It deleted the award of actual and exemplary damages for alleged lack of proof that HRI accepted CPI's offer to purchase the condominium unit.[7]

---

[5] *Id.* at 37-38.

[6] *Id.*

[7] *Id.* at 38.

The Office of the President's Ruling

On further appeal, the Office of the President (OP), by Decision[8] dated January 21, 2014, also affirmed with modification the HLURB Board of Commissioner's Ruling. It deleted the award of attorney's fees and cost of litigation.[9]

Through Resolution dated August 13, 2014, FEPI's motion for reconsideration was denied.[10]

Proceedings Before the Court of Appeals

Undaunted, FEPI filed a petition for review on *certiorari* with the Court of Appeals (CA) which, under Decision[11] dated November 29, 2016, too, found in favor of HRT.

It held that under Section 25 of Presidential Decree No. 957 (PD 957),[12] the buyer, in this case, HRI, has the unmistakable right to demand for delivery of title upon full payment of the purchase price. Although the contract to sell obliged HRI to pay the DST, value-added tax, and transfer taxes as part of its monetary obligation, nothing therein specifically states that payment of these expenses is a prerequisite to the delivery of the title.[13] It also rejected FEPI's claim of *force majeure* brought about by the failure of the Makati City Assessor's Office to release the current valuation cost of the common areas and individual units of the condominium structure.

Under Resolution[14] dated May 26, 2017, the CA denied FEPI's motion for reconsideration.

---

[8] *Id.* at 38-39.

[9] *Id.* at 38.

[10] *Id.* at 39.

[11] *Id.* at 36-44.

[12] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

[13] *Rollo*, p. 41.

[14] Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justice Sesinando L. Villon and Now Supreme Court Associate Justice Rodil V. Zalameda, *id.* at 46-47.

The Present Petition

FEPI now seeks affirmative relief from the Court. It posits anew that HRI's payment of DST and local transfer taxes is a *condition sine qua non* to the delivery of the owner's duplicate copy of the CCT per the parties' contract to sell. Thus, without the payment of taxes and other expenses, HRI's right to demand the delivery of the owner's duplicate copy of the CCT has not arisen and consequently, it has no cause of action for specific performance.

Following Section 200 of the National Internal Revenue Code of 1997 (NIRC), a CCT may not be issued without proof of payment of DST. Further, under Section 135 of the Local Government Code (LGC), the Registry of Deeds requires for registration the official receipt of the transfer tax payment, the Certificate Authorizing Registration (CAR) from the Bureau of Internal Revenue (BIR), and official receipts of DST and Capital Gains Tax (CGT) payments, among others.

Thus, unless HRI complies with its monetary obligations, its right to demand the owner's duplicate copy of the CCT will not arise.

By Comment[15] dated August 12, 2019, HRI counters that FEPI's obligation to execute a notarized Deed of Absolute Sale and deliver the owner's duplicate copy of the CCT is completely independent of its (HRI's) possible tax liabilities. As found by the tribunals below, there is no provision in the Contract to Sell which requires remittance of the tax payments to FEPI as a condition precedent to the execution of the notarized Deed of Absolute Sale and the delivery of the owner's duplicate copy of the CCT. The contract to sell simply bears HRI's obligation to pay the DST and other taxes — an obligation which HRI may only comply with once a notarized Deed of Sale has been executed, and the appropriate taxes, assessed.[16]

---

[15] *Id.* at 113-124.

[16] *Id.* at 116.

FEPI's refusal to deliver the owner's duplicate copy of the CCT despite the buyer's full payment makes it liable under Section 25 of PD 957. Also, while it may be true that certain taxes must be paid for the CCT to be transferred to HRI's name, the same would not even be possible if the seller, FEPI, refuses to execute the Deed of Absolute Sale.[17]

It is of common knowledge that one of the requirements for processing tax payments on the sale of real properties is the Deed of Absolute Sale itself. Likewise, the City Treasurer's Office where the property is located requires the aforesaid deed for assessment of transfer taxes.[18]

The Deed of Absolute Sale itself is a prerequisite to the tax payment on the sale and transfer of real property. Thus, if the seller does not execute a Deed of Absolute Sale even after full payment of the purchase price, the BIR and the City Treasurer's Office will not be able to compute the taxes and fees due.[19]

Threshold Issue

Is payment of the DST and other local taxes a condition precedent to FEPI's execution of a notarized Deed of Absolute Sale and the subsequent delivery to HRI of the owner's duplicate copy of the CCT?

Ruling

Upon full payment of the contract price, HRI became rightfully entitled to the execution of a Deed of Absolute Sale in its favor.

A contract to sell has been defined as "a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds itself to sell the property exclusively

---

[17] *Id.* at 119.

[18] *Id.* at 118.

[19] *Id.*

to the prospective buyer upon fulfillment of the condition agreed upon, that is, full payment of the purchase price." In a contract to sell, "ownership is retained by the seller and is not to pass until the full payment of the price."[20] Consequently, once the buyer has paid the purchase price in full, the contract to sell is converted to an absolute sale and the buyer has the right to demand the execution of a Deed of Absolute Sale in its favor.

Here, there is no question that HRI has paid in full the contract price in the amount of ₱20,998,400.00. There is no question either that by operation of law, HRI as the buyer has become rightfully entitled to the execution of a Deed of Absolute Sale in its favor.

HRI may demand as a matter of right a notarized Deed of Absolute Sale in its favor.

While FEPI did execute a Deed of Absolute Sale upon HRI's full payment of the purchase price, the same was undated and unnotarized. FEPI asserts that the document will stay that way until HRI remits the corresponding payment for the DST and other taxes on the sale.

Article 1358 of the Civil Code reads:

> **Article 1358.** The following must appear in a public document:
>
> (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;
>
> x x x x x x x x x

In ***Cenido v. Spouses Apacionado***,[21] the Court ruled that contrary to petitioner's claim, the "*Pagpapatunay*" is a valid contract of sale despite being unnotarized since under Article

---

[20] *Sps. Tumibay v. Sps. Lopez*, 710 Phil. 19, 31 (2013).

[21] 376 Phil. 801, 821 (1999).

1358, a private document, though not reduced to a public one, remains to be valid and is merely unenforceable. So that after the existence of the contract has been admitted, a party to the sale, if he or she is so minded, has the right to compel the other party to execute the proper document following Article 1357[22] of the Civil Code.

Section 135 of the Local Government Code (LGC) further speaks of the requirements for registration of deeds on transfer of real property and the corresponding duty of notaries public who notarized the deeds, thus:

> **SECTION 135.** *Tax on Transfer of Real Property Ownership*. —
>
> a. x x x
>
> b. For this purpose, the Register of Deeds of the province concerned shall, before registering any deed, require the presentation of the evidence of payment of this tax. The provincial assessor shall likewise make the same requirement before canceling an old tax declaration and issuing a new one in place thereof. **Notaries public shall furnish the provincial treasures with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization**. (Emphasis supplied)

On the strength of Article 1357 of the Civil Code and relevant jurisprudence, in relation to Section 135 of the LGC, therefore, HRI has the right to compel FEPI to execute a notarized Deed of Absolute Sale in its favor for purposes of registration.

Presentation of the owner's duplicate certificate of title and proof of payment of taxes and fees are conditions sine qua non to the transfer of title before the Register of Deeds

---

[22] **Art. 1357**. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article [Article 1358], the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

Under Section 135 of the LGC, proof of payment of taxes and fees is a requirement before the Register of Deeds may initiate the transfer of title over a property, *viz.*:

> SECTION 135. *Tax on Transfer of Real Property Ownership*. —
>
> x x x x x x x x x
>
> (b) For this purpose, the Register of Deeds of the province concerned shall, **before registering any deed, require the presentation of the evidence of payment of this tax**. The provincial assessor shall likewise make the same requirement before canceling an old tax declaration and issuing a new one in place thereof. Notaries public shall furnish the provincial treasures with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization. (Emphasis supplied)

Here, HRI recognizes its obligation to pay the taxes and registration expenses as buyer of the condominium unit pursuant to paragraph 4 (b) of the Contract to Sell.[23] It also does not dispute the common fact that it needs to pay the relevant taxes and fees for registration of a new title under its name. The only thing HRI demands from FEPI, which the latter has persistently refused to deliver, is copy of the owner's duplicate certificate of title on the premise that HRI must first present proof that it had already paid the required taxes and fees.

FEPI is mistaken.

Section 41 Presidential Decree No. 1529, otherwise known as the "Property Registration Decree," provides:

---

[23] 4. **OTHER MONETARY OBLIGATIONS OF BUYER**. The *BUYER* further agrees to pay, in addition to the LUMP SUM PRICE and interest thereon mentioned in Section 2, the following:

x x x x x x x x x

b. Taxes and Registration Expenses

Documentary stamp tax, value-added tax, transfer tax, and other related taxes and expenses due and payable in connection with the transfer of the title of the UNIT to the BUYER shall be for the account of the BUYER.

Section 41. *Owner's duplicate certificate of title*. — The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

Section 53 of the same law expounds:

Section 53. *Presentation of owner's duplicate upon entry of new certificate*.— No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

x x x x x x x x x

Thus, it is clear that for purposes of registration of any voluntary transactions before the Register of Deeds and the subsequent issuance of a new certificate of title,[24] the owner's

[24] **Section 43.** *Transfer Certificate of Title*. — The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title," and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.

duplicate copy of the certificate of title must be surrendered by the parties to the Register of Deeds.

To emphasize, upon HRI's full payment of the purchase price, not only has it acquired the right to a notarized Deed of Absolute Sale but the right as well to the owner's duplicate CCT. For without these documents, HRI may not possibly cause the registration of a new title under its name.

FEPI is liable under Sections 17 and 25 of PD 957.

We now tackle Sections 17 and 25 of PD 957, *viz.*:

Section 17. *Registration.* — All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, **whether or not the purchase price is paid in full**, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

x x x x x x x x x

Section 25. *Issuance of Title.* — The owner or developer shall deliver the title of the lot or unit to the buyer **upon full payment of the lot or unit**. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith. (Emphases supplied)

The registration of the final deed of sale here is the obligation of FEPI under Section 17. On the other hand, issuance of title under Section 25 should be construed to mean delivery by FEPI of the owner's duplicate copy of the CCT, again for purposes of causing the registration of the property in the buyer's name.

As it was, FEPI violated both provisions of law. Not only did it fail to register the deed of absolute sale before the Register

of Deeds, it also refused to deliver to HRI the owner's duplicate copy of the CCT.

Notably, FEPI's obligations to register the final deed of sale (Section 17) and deliver the owner's duplicate copy of the CCT (Section 25) are distinct from the obligation of HRI, as buyer, to legally process the transfer of the CCT in its name as the now registered owner.

ACCORDINGLY, the petition for review is **PARTLY GRANTED**. The Decision dated November 29, 2016 and Resolution dated May 26, 2017 of the Court of Appeals in CA-G.R. SP No. 137086 are **MODIFIED**, as follows:

1) Petitioner Fil-Estate Properties, Inc. is **ORDERED** to immediately **EXECUTE** a notarized Deed of Absolute Sale covering Ground Retail Unit B, West Tower in favor of respondent Hermana Realty, Inc., **PROVIDE** an original copy thereof to respondent Hermana Realty, Inc., and **CAUSE** its registration pursuant to Section 17 of PD 957;

2) Petitioner Fil-Estate Properties, Inc. is **DIRECTED** to **DELIVER** the owner's duplicate copy of the Condominium Certificate of Title to respondent Hermana Realty, Inc.; and

3) Respondent Hermana Realty, Inc. is **ORDERED** to directly settle the taxes and registration expenses with the government within the periods prescribed under the law and take charge of causing the issuance of a new Condominium Certificate of Title in its name.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Gesmundo, Lopez,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 241901. November 25, 2020]

ERWIN PASCUAL *y* FRANCISCO and WILBERT SARMIENTO *y* MUÑOZ a.k.a. "Boyet",* *Petitioners, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF TRIAL COURTS ARE GENERALLY ACCORDED WITH RESPECT; RATIONALE THEREFOR.— Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect. Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason is quite simple: the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial. The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.

After a judicious perusal of the records of the instant petition, the Court finds no compelling reason to depart from the RTC and the CA's factual findings. The Court affirms petitioners' conviction.

2. CRIMINAL LAW; PERSONS CRIMINALLY LIABLE FOR FELONIES; ACCOMPLICES; REQUISITES FOR A PERSON TO BE CONSIDERED AS AN ACCOMPLICE; ACCOMPLICES DO NOT DECIDE WHETHER THE CRIME SHOULD BE COMMITTED, BUT THEY ASSENT

* Spelled as Munoz in some parts of the *rollo*.

TO THE PLAN AND COOPERATE IN ITS ACCOMPLISHMENT.— It was proven during trial that prior to the fatal stabbing of Rabang, Alan and Richard saw Pascual hitting Rabang after cursing him. When Glicerio stabbed Rabang, Pascual was likewise seen together with Sarmiento, Ceasico, and Glicerio cornering Rabang and preventing the latter's escape. Pascual, fully aware of the criminal design of his cohorts, cooperated in the execution of acts which led to the death of Rabang. He was not an innocent spectator; he was at the *locus criminis* to aid or abet the commission of the crime. These facts, however, did not make him a conspirator; at most he was only an accomplice. Indeed, the ·line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight. Accomplices do not decide whether the crime should be committed, but they assent to the plan and cooperate in its accomplishment.

. . .

. . . [T]he RPC defines accomplices as those persons who, not being included in Article 17 of the RPC, cooperate in the execution of the offense by previous or simultaneous acts. The Court has held that an accomplice is one who knows the criminal design of the principal and cooperates knowingly or intentionally by supplying material or moral aid for the efficacious execution of the crime. In order that a person may be considered as an accomplice in the commission of an offense, the following requisites must concur: (a) community of design, *i.e.*, knowing the criminal design of the principal by direct participation, he or she concurs the latter in his/her purpose; (b) he or she cooperates in the execution of the offense by previous or simultaneous acts; and (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

3. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; REQUISITES THEREOF; THE ELEMENTS OF CONSPIRACY MUST BE PROVED BEYOND REASONABLE DOUBT.— The Revised Penal Code (RPC) provides that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following three requisites: (1)

that two or more persons came to an agreement; (2) that the agreement concerned the commission of a crime; and (3) that the execution of the felony was decided upon. Except in the case of the mastermind of a crime, it must also be shown that the accused performed an overt act in furtherance of the conspiracy. The Court has held that in most instances, direct proof of a previous agreement need not be established, for conspiracy may be deduced from the acts of the accused pointing to a joint purpose, concerted action and community of interest. The rule is that the existence of conspiracy cannot be presumed. Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.

4. ID.; ID.; ID.; WHERE CONSPIRACY IS NOT ESTABLISHED OR THE ACCUSED'S ROLE IN THE COMMISSION OF THE CRIME IS MINOR OR NOT INDISPENSABLE, ANY DOUBT AS TO THE ACCUSED'S PARTICIPATION IN A CRIME WILL ALWAYS BE RESOLVED IN FAVOR OF THE MILDER FORM OF CRIMINAL LIABILITY, THAT OF A MERE ACCOMPLICE.— Pascual could not be held as principal by direct participation as there were doubts whether there was a prior agreement or community of intention among petitioners' group in killing Rabang. In case of doubt as to the accused's participation, the doubt should be resolved in his favor. The rationale for this is that where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice. Besides, in several cases wherein the Court confirmed the existence of conspiracy, some accused were held liable as mere accomplices only because their role in the commission of the crime was not indispensable; in other words, minor.

It must be emphasized that the incident started after Glicerio had a verbal altercation with Rabang and his companions. Then, Ceasico and petitioners crossed the street to know why Glicerio was having a verbal altercation with Rabang. When Rabang cursed Glicerio, Pascual punched him and immediately chased Apostol. Thereafter, a brawl ensued between petitioners' group and Rabang's group.

When Pascual retreated because Apostol was already holding a piece of wood, he returned to where Glicerio and Rabang

were standing. It was when Rabang was cornered that petitioners aided Glicerio in stabbing him. From this unexpected scuffle between the two groups, it cannot be concluded that petitioners' group had a previous agreement or community of intention to kill Rabang. The incident was a result of a sudden burst of emotions which led to the killing of Rabang. In other words, Pascual, knowing the criminal design of Glicerio, cooperated by supplying material or moral aid for the efficacious execution of the crime. As can be gleaned from the records, the crime might still have been consummated even without the participation of Pascual. His role in the perpetration of the crime is of a minor character and not indispensable in its consummation.

5. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS THEREOF; UNLAWFUL AGGRESSION; IF NO UNLAWFUL AGGRESSION CAN BE ATTRIBUTED TO THE VICTIM, SELF-DEFENSE IS UNAVAILING BECAUSE THERE WOULD BE NOTHING TO REPEL. — For self-defense to be appreciated, petitioners need to prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself or herself. In self-defense, unlawful aggression is the primordial element, a condition *sine qua non.* If no unlawful aggression attributed to the victim is established, self-defense is unavailing because there would be nothing to repel.

. . .

On the contrary, the prosecution was able to prove through the testimonies of several witnesses that it was petitioners' group who was the unlawful aggressor when they first attacked an old man, then an innocent *puto-bumbong* vendor and her son, and finally Deang, who was merely performing his job as a *barangay tanod* in the area. As a *barangay tanod*, Deang had the duty to maintain peace and order in the area and to apprehend petitioners for attacking innocent persons.

6. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; THE EXTENT OF THE VICTIM'S INJURIES MAY PROVE THE ACCUSED'S INTENT TO KILL AND BELIE SELF-DEFENSE.— Petitioners did not act in self-defense; their intent

to kill Deang was evident from the extent of his injuries. Dr. Santos noted that were it not for the timely medical attention, Deang would have died from his injuries. Records reveal that Deang sustained five incised wounds on his face, and a fatal stab wound on his chest wall which severed a rib vessel and a stab wound at the side of his right arm. Obviously, petitioners' claim of self-defense, which remains unsubstantiated, is nothing more than a clear last-ditch effort to exonerate themselves.

7. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES THEREOF; A SURRENDER AFTER EVADING A WARRANT OF ARREST IS NOT VOLUNTARY OR SPONTANEOUS.— It should be emphasized that the RTC and the CA correctly disregarded Pascual's plea for voluntary surrender as a mitigating circumstance. For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself/herself to a person in authority or the latter's agent; and (3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused is give oneself up and submit to the authorities either because he/she acknowledges his/her guilt or he/she wishes to save the authorities the trouble and expense that may be incurred for his/her search and capture. Without these elements, and where the clear reason for the supposed surrender is the inevitability of arrest and the need to ensure his/her safety, the surrender is not spontaneous and therefore, cannot be characterized as "voluntary surrender" to serve as mitigating circumstance.

Here, a warrant of arrest had been issued on April 1, 1998 against all four accused, but they remained at large. This prompted the trial judge to archive the cases subject to revival upon the arrest of the accused. It was only on August 30, 2000 that Pascual filed a motion for voluntary surrender. Evidently, the surrender cannot be regarded as voluntary or spontaneous.

8. ID.; HOMICIDE; PENALTY; PENALTY FOR AN ACCOMPLICE.— The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. Because Pascual is only an accomplice, the penalty to be imposed is one degree lower than that imposed for the principal, *i.e.*, *prision mayor*. There being neither aggravating nor mitigating circumstances, the

penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, Pascual is accordingly sentenced to suffer the prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day *of prision mayor*, as maximum.

9. ID.; ID.; MONETARY AWARDS; APPORTIONMENT OF CIVIL LIABILITY; AN ACCOMPLICE TO THE CRIME OF HOMICIDE IS LIABLE TO PAY ONLY A PROPORTIONATE SHARE OF EACH OF THE CIVIL INDEMNITY, MORAL DAMAGES, AND ACTUAL DAMAGES.— In Criminal Case No. 98-163621, the CA ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱2,004,000.00 representing loss of earning capacity. . . . Pascual, as accomplice in the crime of homicide, is liable to pay one-third of each civil liability or ₱16,667.67 as civil indemnity, ₱16,667.67 as moral damages, and ₱33,333.33 as actual damages. This apportionment is based on the interpretation that there is only one principal who is liable in the case at bench, similar to *Saldua*. Unfortunately, however, Glicerio and Ceasico remain at large. Evidently, the above-mentioned apportionment of civil liability is more favorable to Pascual.

10. ID.; ID.; ID.; ID.; LOSS OF EARNING CAPACITY; AN ACCOMPLICE TO THE CRIME OF HOMICIDE IS LIABLE TO PAY ONLY A PROPORTIONATE AMOUNT OF THE LOSS OF EARNING CAPACITY OF THE VICTIM.— Article 2206 of the Civil Code of the Philippines provides that the heirs of the victim are entitled to be indemnified for loss of earning capacity.

The parties stipulated that Rabang was earning an income of ₱10,000.00 a month at the time of his death.

Based on the formula laid down in the case of *People v. Wahiman*, the computation of the loss of earning capacity should be as follows:

Net Earning Capacity = life expectancy x [gross annual income – living expenses]

= 2/3 [80 – age at time of death] x [gross annual income – 50% of gross annual income]

With the established facts that Rabang was 30 years old at the time he was killed by petitioners and that he was earning 10,000 monthly, the compensation for loss of earning capacity is computed as follows:

Net Earning Capacity = life expectancy x [gross annual income - living expenses]
= 2/3 [80 - 30] x [Php120,000 - Php60,000]
= 33.4 x Php60,000
= ₱2,004,000.00

Since Pascual's civil liability is reduced to conform to *Tampus* and *Saldua*, in relation to *Jugueta*, the Court deems it logical to likewise reduce the amount of loss of earning capacity to be paid by Pascual. Pascual is liable to pay only one-third of ₱2,004,000.00 as he merely acted as an accomplice in the killing of Rabang. Thus, he is only liable for the amount of ₱668,000.00 as compensation for Rabang's loss of earning capacity.

11. ID.; FRUSTRATED HOMICIDE; PENALTY THEREOF.— *In Criminal Case No. 98-163622.*

. . . [C]onsidering that the crime committed is merely Frustrated Homicide, the penalty to be imposed shall be the penalty next lower in degree than *reclusion temporal*, which is *prision mayor*. Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstances present, the minimum penalty to be meted out on petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional*, as minimum, to anywhere between the medium period of *prison mayor* ranging from eight (8) years and one (1) day to ten (10) years. Thus, the RTC correctly imposed the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

12. ID.; ID.; MONETARY AWARDS; CIVIL INDEMNITY; MORAL DAMAGES; TEMPERATE DAMAGES; WHERE THE VICTIM IN FRUSTRATED HOMICIDE SUFFERS PECUNIARY LOSS BUT FAILS TO PROVE THE ACTUAL AMOUNT THEREOF, TEMPERATE DAMAGES MAY BE AWARDED IN ADDITION TO CIVIL INDEMNITY AND

MORAL DAMAGES.— [I]n Criminal Case No. 98-163622, the CA aptly ordered both petitioners to pay Deang the amounts of 30,000.00 as civil indemnity and ₱30,000.00 as moral damages in line with *Jugueta*. The CA was also correct in reducing the amount of temperate damages from ₱400,000.00 to ₱25,000.00 to be awarded to Deang. While it cannot be denied that Deang suffered pecuniary loss, he failed to offer in evidence statements of accounts to prove actual damages. Thus, in conformity with prevailing jurisprudence, the award of temperate damages of ₱25,000.00 is sufficient.

13. ID.; ID.; ID.; INTEREST ON MONETARY AWARDS; ALL MONETARY AWARDS SHALL EARN INTEREST AT THE RATE OF 6% PER ANNUM FROM THE FINALITY OF A DECISION UNTIL FULL PAYMENT.— All monetary awards shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated January 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 35927. The assailed CA Decision affirmed the Joint Decision[3] dated July 29, 2013 Branch 41, Regional Trial Court (RTC), Manila finding Erwin Pascual *y* Francisco (Pascual) guilty beyond

---

[1] *Rollo*, pp. 11-32.

[2] *Id.* at 38-67; penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Ramon R. Garcia and Germano Francisco D. Legaspi, concurring.

[3] *Id.* at 90-140; penned by Presiding Judge Rosalyn D. Mislos-Loja.

reasonable doubt as an accomplice in the crime of Homicide in Criminal Case No. 98-163621; and further finding both Pascual and Wilbert Sarmiento *y* Muñoz a.k.a "Boyet" (Sarmiento) guilty beyond reasonable doubt of the crime of Frustrated Homicide in Criminal Case No. 98-163622.

The Antecedents

On February 24, 1998, Pascual and Sarmiento (collectively, petitioners), together with their co-accused *a quo* Joel Ceasico, Jr. (Ceasico) and Bartolome Glicerio, Jr. (Glicerio), were charged under two separate Informations:[4] (1) Murder for the killing of Ernanie Rabang *y* Laquindanum (Rabang); and (2) Frustrated Murder for inflicting fatal injuries on the person of Joel Deang *y* Sese (Deang), to wit:

Criminal Case Nos. 98-163621 (Murder)

"That on or about October 29, 1996 in the City of Manila, Philippines the said accused conspiring and confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill, treachery and evident premeditation, attack, assault and use personal violence upon the person of ERNANIE RABANG y LAQUINDANUM, by then and there stabbing the latter on the chest with a bladed instrument, thereby inflicting upon said ERNANIE RABANG y LAQUINDANUM stab wound which is the direct and immediate cause of his death thereafter.

Contrary to law."[5]

Criminal Case Nos. 98-163622 (Frustrated Murder)

"That on or about October 29, 1996 in the City of Manila, Philippines the said accused conspiring and confederating together and helping one another did then and there willfully, unlawfully and feloniously, with intent to kill and with abuse of superior strength, attack, assault and use personal violence upon the person of JOEL DEANG y SESE, by then and there mauling and stabbing the latter on the different parts of the body with knives, ice pick and broken bottles, thereby inflicting upon said JOEL DEANG y SESE stab wounds which are

---

[4] Records, Vol. 1, pp. 2-3, 112-113.

[5] *Id.* at 2.

necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of murder, as a consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to JOEL DEANG y SESE which prevented his death thereafter.

Contrary to law."[6]

On April 1, 1998, a warrant of arrest was issued against all four accused. Despite the warrant, all four remained at large. Thus, on April 5, 1999, the RTC issued an order archiving the cases subject to revival upon the arrest of the accused. Meanwhile, an alias warrant of arrest was issued against them. Thereafter, the prosecution filed a motion to set the cases for arraignment after the motion for reconsideration of the accused was denied. After the setting of the arraignment, the RTC again sent the cases to the archives as all accused still remained at large.[7]

On August 30, 2000, Pascual filed a motion for voluntary surrender; hence, he was committed to the Manila City Jail on the same day. On his arraignment on September 6, 2000, he pleaded "not guilty" to both charges.[8]

On July 29, 2008, Sarmiento was arrested and committed to the Manila City Jail. On his arraignment on August 24, 2008, he entered a plea of "not guilty" to the charges.[9]

In the course of the prosecution's presentation of evidence, the following incidents occurred: (1) Pascual filed a Petition for Bail[10] on December 7, 2000 which the RTC granted on April 24, 2001;[11] and (2) Sarmiento filed a Petition for Bail[12] on

---

[6] *Id.* at 112.

[7] *Id.* at 39-40, 91-92.

[8] *Id.* at 40.

[9] *Id.*

[10] Records, Vol. I, pp. 182-183.

[11] See Order dated April 24, 2001 penned by Judge Rodolfo A. Ponferrada, *id.* at 269.

[12] Records, Vol. II, pp. 620-621.

December 8, 2008 which the RTC deemed as mooted after it dismissed on September 20, 2010 the case for Murder in so far as Sarmiento was concerned for failure of the prosecution to prosecute the case.[13]

Glicerio and Ceasico remained at large.[14]

Version of the Prosecution

The murder of Rabang.

The prosecution alleged that on October 29, 1996 at around 2:00 a.m., Richard Apostol (Apostol) was on his way to the house of his friend, Alan Palad (Palad), located along Zamora Street, Tondo, Manila. While walking along Mejorada Street near Sande Street, Apostol met Rabang, who asked him if he saw Palad. Apostol then told Rabang to go with him instead as he was going to Palad's house. When they reached the corner of Sande and Mejorada Streets, they met another friend named Rodel Robles (Robles). After an exchange of pleasantries, Apostol left Robles and Rabang to call Palad.[15]

Thereafter, Apostol, who was already with Palad, returned to Sande Street where Rabang and Robles were waiting. While the four were conversing among themselves, Apostol noticed four men coming from Perla Street heading their way. Three of the four men crossed Sande Street, while the other one remained on the other side of the street. One of the three men who crossed the street walked to the opposite side to urinate. The one who urinated was later identified as Glicerio and the other three were identified as petitioners and Ceasico.[16]

After the group of Pascual approached the group of Apostol, Glicerio suddenly asked Apostol's group: "*ano iyon?*" to which Rabang responded, "*anong ano rin iyon?*" Pascual replied, "*tang-*

---

[13] *Rollo*, p. 95.

[14] *Id.* at 96.

[15] *Id.* at 41. See also TSN, December 14, 2000, pp. 40-43.

[16] *Id.*

ina mo, ang yabang mo ha!" and suddenly hit Rabang. Apostol backed off due to the ensuing altercation. Pascual chased Apostol leaving Rabang and Glicerio behind. As Apostol sensed that Pascual had a bladed weapon, he picked up a piece of wood from a nearby backyard. When Pascual saw that Apostol was holding a wood, he withdrew and returned to the spot where Rabang and Glicerio were standing.[17]

On the other hand, Sarmiento ran after Palad, who was then able to seek refuge in his house and asked help from his brother. While at his house, Palad saw petitioners and Ceasico proceed to the place where Rabang and Glicerio were having an altercation. From his window, Palad saw petitioners, Ceasico, and Glicerio (petitioners' group) surround Rabang. When Rabang was cornered, petitioners aided Glicerio in stabbing Rabang. Rabang desperately parried all the blows delivered by petitioners' group, but he was unsuccessful.[18]

Apostol, who was near the crime scene, threw a piece of wood towards petitioners' group to distract them. As a result, Rabang was able to move away from petitioners' group, walked towards Apostol, and uttered, "*may tama ako.*" At that point, Apostol saw Rabang on the verge of death. Rabang's relatives and neighbors rushed him to the hospital. Unfortunately, Rabang was pronounced dead on arrival.[19]

Apparently, petitioners' group was not yet done wreaking havoc in their community after the stabbing incident. They were seen kicking an old man who was then riding on his bicycle along Sande Street which prompted a Security Guard nearby to fire a warning shot to divert their attention. Petitioners' group walked casually towards Pavia Street to Divisoria.[20]

The inflicting of fatal wounds on the person of Deang.

---

[17] *Id.* at 42.

[18] *Id.* See also TSN, February 21, 2001, pp. 44-73.

[19] *Id.*

[20] *Id.* at 43.

On the same day of October 29, 1996, Deang, who was a *barangay tanod* of Divisoria, alighted from a jeepney along Pavia Street when he saw petitioners' group mauling an old man at a nearby bakery. Deang shouted at them. This prompted petitioners' group to proceed to the corner across the street. This time, they turned their ire on Christopher Lising (Christopher), a 15-year-old son of Norma Lising (Norma), who was selling *puto-bumbong* in the area. Petitioners' group surrounded Christopher and threatened to stab him, but Norma protected her son. Deang intervened, introduced himself as a *barangay tanod*, and told petitioners' group to stop making trouble. Instead of heeding Deang's warning, Pascual swiftly punched Deang's back causing Deang to run towards the *barangay* hall to ask for help. As he could not find anyone to assist him, Deang picked up a bamboo stick and returned to Norma's stall. When Deang, confronted petitioners' group again, they surrounded him and threatened to stab him with their knives. Deang ran towards Moriones Street, but petitioners' group chased him and eventually caught up with him.[21]

Deang tripped on a drainage pipe and fell to the ground. Petitioners' group surrounded him and began hitting him simultaneously while he was lying on the ground. Pascual stabbed Deang with a knife; Sarmiento grabbed Deang's bamboo stick and struck him several times on the head; Ceasico hit Deang's face with a broken bottle; and Glicerio attacked Deang with an ice pick. Deang tried to parry the attacks, but to no avail. Due to the severity of his injuries, Deang lost consciousness. Later, he was taken to a hospital where he survived the fatal wounds and injuries inflicted on him.[22]

Dr. Policarpio Santos, Jr., the attending physician, noted that if it were not for the timely medical intervention, Deang would have died from his injuries.[23]

---

[21] *Id.*

[22] *Id.* at 43-44.

[23] *Id.* at 44-45.

Version of the Defense

Petitioners raised self-defense and denied the allegations hurled against them.

The testimony of Pascual:

Pascual narrated that on October 29, 1996, he invited his friends to go to a wake in Caloocan. Sarmiento, Ceasico, and Glicerio joined him. They took a jeepney ride, but did not make it to Caloocan because Glicerio asked them instead to go to his girlfriend's house in Delpan. Before reaching Delpan, they alighted from the jeepney on Moriones Street to take another ride to Divisoria. While inside the second jeepney, Glicerio asked its driver to stop along Juan Luna Street or Sande Street, because he wanted to urinate. While Glicerio was urinating, a man approached him.

Petitioners, and Ceasico went near Glicerio and heard the latter arguing with the man. Pascual pleaded with the man to pardon them because they were just passing through, but the man suddenly punched him. Another man who was holding a piece of wood hit Glicerio. When the man was about to hit him also, he ran towards Moriones Street. When he noticed that he was not being followed by anybody, he returned to his friends.

Thereafter, Deang arrived and introduced himself as the *barangay* chairman and told them to go home. Sarmiento told the *barangay* chairman that he has a high school classmate who lives in the vicinity. Then, they proceeded to Sarmiento's classmate, but no one came out when they knocked on the door. Thus, they decided to go home.

While passing along Moriones Street, they saw two men; one of them shouted, "*ayun yung mga tarantado!*." Pascual recognized one of them as the man who introduced himself as the *barangay* chairman of the area. Suddenly, the *barangay* chairman attacked them, while the other men threw bottles at them. His friends wrestled with the *barangay* chairman, while

he just stood and watched them. After the incident, they all went home.[24]

Sarmiento corroborated the statements of Pascual. He likewise denied the allegations against them.

The Ruling of the RTC

In its Decision dated July 29, 2013, the RTC found Pascual guilty beyond reasonable doubt as an accomplice in the crime of Homicide in Criminal Case No. 98-163621 and sentenced him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. The RTC further ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱25,000.00 as moral damages, and ₱2,004,000.00 as compensation for loss of earning capacity.

The RTC likewise found both petitioners guilty beyond reasonable doubt of Frustrated Homicide in Criminal Case No. 98-163622 and sentenced them to four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. It ordered both to jointly pay Deang the sum of ₱400,000.00 as temperate damages and ₱25,000.00 each as moral damages.

The Ruling of the CA

On January 18, 2018, the CA affirmed petitioners' conviction with modifications as to the monetary awards.

In Criminal Case No. 98-163621, the CA ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱2,004,000.00 representing loss of earning capacity. In Criminal Case No. 98-163622, the CA ordered both petitioners to pay Deang ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱25,000.00 as temperate damages. The

---

[24] *Id.* at 50. See also TSN, August 1, 2012, pp. 4-44; TSN, August 29, 2012, pp. 3-22.

CA likewise imposed interest at the rate of 6% *per annum* to all monetary awards from the date of the finality of the decision until fully paid.

Hence, the instant petition.

Petitioners raise the following issues:

I.

WHETHER OF NOT THE [CA] GRAVELY ERRED IN FINDING THE PETITIONERS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE PETITIONER [PASCUAL'S] PARTICIPATION IN HOMICIDE AND FRUSTRATED HOMICIDE.

II.

WHETHER OR NOT THE [CA] GRAVELY ERRED IN FINDING THE PETITIONERS GUILTY OF THE CRIME CHARGED DESPITE THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF PETITIONER [SARMIENTO].[25]

The Ruling of the Court

The petition has no merit.

Well settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect.[26] Findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[27] The reason is quite simple: the trial judge is in a better position to ascertain the conflicting

---

[25] *Rollo*, p. 23.

[26] *Estrella v. People*, G.R. No. 212942, June 17, 2020.

[27] *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018, 876 SCRA 330, 338, citing *People v. De Guzman*, 564 Phil. 282, 290 (2007).

testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.[28] The task of taking on the issue of credibility is a function properly lodged with the trial court. Thus, generally, the Court will not reexamine or reevaluate evidence that had been analyzed and ruled upon by the trial court.[29]

After a judicious perusal of the records of the instant petition, the Court finds no compelling reason to depart from the RTC and the CA's factual findings. The Court affirms petitioners' conviction.

In Criminal Case No. 98-163621, the CA correctly affirmed the RTC's ruling that Pascual is liable as an accomplice.

In the case at bench, the following factual findings of the CA were duly established:

> x x x Although there was no evidence showing a prior agreement among the two accused-appellants and the two accused, the following chain of events however show their commonality of purpose: *first*, accused-appellant [Pascual] chased [Apostol] but when he failed to catch up with the latter, he returned to the place where the victim [Rabang] and accused Bartolome were left; *second*, accused Ceasico and accused-appellant [Sarmiento] ran after [Robles] and [Palad], but they also returned to where Ernanie was left when they also failed to catch [Robles] and [Palad]; *third*, [Palad] testified that from his house, he could see that victim [Rabang] was surrounded by Bartolome, Ceasico, and accused-appellants [Pascual] and [Sarmiento]; and *fourth*, [Apostol] testified that he saw Glicerio stab [Rabang]. At this point, there could be no other conclusion except that accused-appellant Pascual was fully aware of accused Bartolome's intent to kill the victim, and that he assented to, and cooperated in the accomplishment of the crime. It is an essential condition to the existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice, but it is furthermore necessary that the latter, with knowledge of the criminal intent, should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious

---

[28] *Id.*, citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

[29] *Estrella v. People*, *supra*.

way. In cases of doubt as to whether persons acted as principals or accomplices, the doubt must be resolved in their favor and they should be held guilty as accomplices. Based on the foregoing, accused-appellant Pascual is guilty as an accomplice of the crime of homicide.[30]

It was proven during trial that prior to the fatal stabbing of Rabang, Alan and Richard saw Pascual hitting Rabang after cursing him. When Glicerio stabbed Rabang, Pascual was likewise seen together with Sarmiento, Ceasico, and Glicerio cornering Rabang and preventing the latter's escape. Pascual, fully aware of the criminal design of his cohorts, cooperated in the execution of acts which led to the death of Rabang. He was not an innocent spectator; he was at the *locus criminis* to aid or abet the commission of the crime. These facts, however, did not make him a conspirator; at most he was only an accomplice. Indeed, the line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight.[31] Accomplices do not decide whether the crime should be committed, but they assent to the plan and cooperate in its accomplishment.[32]

The Revised Penal Code (RPC) provides that a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[33] To prove conspiracy, the prosecution must establish the following three requisites: (1) that two or more persons came

---

[30] *Rollo*, p. 62.

[31] *Saldua v. People*, G.R. No. 210920, December 10, 2018, 889 SCRA 1, 16-17, citing *People v. Eusebio*, 704 Phil. 569, 576 (2013).

[32] *Id.*

[33] Article 8 of the Revised Penal Code (RPC).

ART. 8. *Conspiracy and proposal to commit felony*. — Conspiracy and proposal to commit felony are punishable only in the cases in which the law specifically provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

to an agreement; (2) that the agreement concerned the commission of a crime; and (3) that the execution of the felony was decided upon.[34] Except in the case of the mastermind of a crime, it must also be shown that the accused performed an overt act in furtherance of the conspiracy.[35] The Court has held that in most instances, direct proof of a previous agreement need not be established, for conspiracy may be deduced from the acts of the accused pointing to a joint purpose, concerted action and community of interest.[36] The rule is that the existence of conspiracy cannot be presumed.[37] Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.[38]

On the other hand, the RPC defines accomplices as those persons who, not being included in Article 17 of the RPC,[39] cooperate in the execution of the offense by previous or simultaneous acts.[40] The Court has held that an accomplice is one who knows the criminal design of the principal and

---

[34] *People v. De Vera, et al.*, 371 Phil. 563, 583-584 (1999), citing Reyes, *The Revised Penal Code*, 12th ed., p. 133.

[35] *Id.*, citing *People v. Alilio*, 311 Phil. 395, 405 (1995).

[36] *Id.*, citing *People v. Cawaling*, 355 Phil. 1, 39 (1998); *People v. Andres*, 357 Phil. 321, 343 (1998); *People v. Sumalpong*, 348 Phil. 501, 524-525 (1998); *People v. Leangsiri*, 322 Phil. 226, 242 (1996); *People v. Salison, Jr.*, 324 Phil. 131, 146 (1996).

[37] *Saldua v People*, *supra* note 31 at 16, citing *Garcia, Jr. v. Court of Appeals*, 394 Phil. 890, 905 (2000).

[38] *Id.*

[39] Article 17 of the RPC reads:

ART. 17. *Principals*. — The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

[40] Article 18 of the RPC reads:

ART. 18. *Accomplices*. — Accomplices are persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

cooperates knowingly or intentionally by supplying material or moral aid for the efficacious execution of the crime.[41] In order that a person may be considered as an accomplice in the commission of an offense, the following requisites must concur: (a) community of design, *i.e.*, knowing the criminal design of the principal by direct participation, he or she concurs the latter in his/her purpose; (b) he or she cooperates in the execution of the offense by previous or simultaneous acts; and (c) there must be a relation between the acts done by the principal and those attributed to the person charged as accomplice.[42]

Pascual could not be held as principal by direct participation as there were doubts whether there was a prior agreement or community of intention among petitioners' group in killing Rabang. In case of doubt as to the accused's participation, the doubt should be resolved in his favor. The rationale for this is that where the *quantum* of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice.[43] Besides, in several cases wherein the Court confirmed the existence of conspiracy, some accused were held liable as mere accomplices only because their role in the commission of the crime was not indispensable; in other words, minor.[44]

It must be emphasized that the incident started after Glicerio had a verbal altercation with Rabang and his companions. Then, Ceasico and petitioners crossed the street to know why Glicerio was having a verbal altercation with Rabang. When Rabang cursed Glicerio, Pascual punched him and immediately chased Apostol. Thereafter, a brawl ensued between petitioners' group and Rabang's group.

When Pascual retreated because Apostol was already holding a piece of wood, he returned to where Glicerio and Rabang

---

[41] *People v. Fronda*, 294 Phil. 80, 90 (1993).

[42] *People v. Elijorde*, 365 Phil. 640, 650 (1999).

[43] See *People v. Flores*, 389 Phil. 532 (2000).

[44] *People v. Corbes*, 337 Phil. 190, 197-198 (1997). Citations omitted.

were standing. It was when Rabang was cornered that petitioners aided Glicerio in stabbing him. From this unexpected scuffle between the two groups, it cannot be concluded that petitioners' group had a previous agreement or community of intention to kill Rabang. The incident was a result of a sudden burst of emotions which led to the killing of Rabang. In other words, Pascual, knowing the criminal design of Glicerio, cooperated by supplying material or moral aid for the efficacious execution of the crime. As can be gleaned from the records, the crime might still have been consummated even without the participation of Pascual. His role in the perpetration of the crime is of a minor character and not indispensable in its consummation.

The factual backdrop impels the Court to affirm the findings of the CA and the RTC that Pascual should only be held liable as an accomplice in killing Rabang.

Moreover, the CA correctly affirmed the RTC's finding that petitioners failed to prove the presence of the justifying circumstance of self-defense in the crime of Frustrated Homicide.

For self-defense to be appreciated, petitioners need to prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) the reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself or herself.[45] In self-defense, unlawful aggression is the primordial element, a condition *sine qua non*. If no unlawful aggression attributed to the victim is established, self-defense is unavailing because there would be nothing to repel.[46]

The CA and the RTC correctly found that petitioners failed to discharge the burden of proving unlawful aggression on the part of Deang. Petitioners failed to present corroborating evidence other than their self-serving statements that it was Deang who was the unlawful aggressor. Petitioners' bare claim fell short of being clear and convincing.

---

[45] See *People v. Villanueva*, 822 Phil. 821, 833 (2017), citing Section 1, Article 11, REVISED PENAL CODE.

[46] *Id.*, citing *People v. Del Castillo*, 679 Phil. 233, 250 (2012).

On the contrary, the prosecution was able to prove through the testimonies of several witnesses that it was petitioners' group who was the unlawful aggressor when they first attacked an old man, then an innocent *puto-bumbong* vendor and her son, and finally Deang, who was merely performing his job as a *barangay tanod* in the area. As a *barangay tanod*, Deang had the duty to maintain peace and order in the area and to apprehend petitioners for attacking innocent persons.

Petitioners did not act in self-defense; their intent to kill Deang was evident from the extent of his injuries. Dr. Santos noted that were it not for the timely medical attention, Deang would have died from his injuries. Records reveal that Deang sustained five incised wounds on his face, and a fatal stab wound on his chest wall which severed a rib vessel and a stab wound at the side of his right arm.[47] Obviously, petitioners' claim of self-defense, which remains unsubstantiated, is nothing more than a clear last-ditch effort to exonerate themselves.

As regards the penalties, the CA correctly affirmed the RTC's ruling.

In Criminal Case No. 98-163621.

The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. Because Pascual is only an accomplice, the penalty to be imposed is one degree lower than that imposed for the principal, *i.e.*, *prision mayor*. There being neither aggravating nor mitigating circumstances, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, Pascual is accordingly sentenced to suffer the prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

In Criminal Case No. 98-163622.

As aforesaid, under Article 249 of the RPC, the penalty imposed for homicide is *reclusion temporal*. However,

---

[47] *Rollo*, p. 107.

considering that the crime committed is merely Frustrated Homicide, the penalty to be imposed shall be the penalty next lower in degree than *reclusion temporal*, which is *prision mayor*. Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstances present, the minimum penalty to be meted out on petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional*, as minimum, to anywhere between the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. Thus, the RTC correctly imposed the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

It should be emphasized that the RTC and the CA correctly disregarded Pascual's plea for voluntary surrender as a mitigating circumstance. For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself/herself to a person in authority or the latter's agent; and (3) the surrender was voluntary.[48] The essence of voluntary surrender is spontaneity and the intent of the accused is give oneself up and submit to the authorities either because he/she acknowledges his/her guilt or he/she wishes to save the authorities the trouble and expense that may be incurred for his/her search and capture.[49] Without these elements, and where the clear reason for the supposed surrender is the inevitability of arrest and the need to ensure his/her safety, the surrender is not spontaneous and therefore, cannot be characterized as "voluntary surrender" to serve as mitigating circumstance.[50]

Here, a warrant of arrest had been issued on April 1, 1998 against all four accused, but they remained at large. This prompted the trial judge to archive the cases subject to revival upon the

---

[48] *Tadena v. People*, G.R. No. 228610, March 20, 2019, citing *Belbis, Jr. v. People*, 698 Phil. 706, 724 (2012).

[49] *Id.*

[50] *Id.*

arrest of the accused. It was only on August 30, 2000 that Pascual filed a motion for voluntary surrender. Evidently, the surrender cannot be regarded as voluntary or spontaneous.

As to the monetary awards, the Court modifies them to conform to jurisprudence. The Court's ruling in the case of *Saldua v. People*[51] (*Saldua*), citing *People v. Tampus, et al.*,[52] (*Tampus*) is instructive. In *Tampus*, the Court stressed that the courts' discretion in awarding civil liability in criminal cases should not be untrammeled and must be guided by the principle behind differing liabilities for persons with varying roles in the commission of the crime.[53] The Court explained in *Tampus*:

> The entire amount of the civil indemnity, together with the moral and actual damages, should be apportioned among the persons who cooperated in the commission of the crime according to the degree of their liability, respective responsibilities and actual participation in the criminal act. Salvador Viada, an authority in criminal law, is of the opinion that there are no fixed rules which are applicable in all cases in order to determine the apportionment of civil liability among two or more persons civilly liable for a felony, either because there are different degrees of culpability of offenders, or because of the inequality of their financial capabilities. On this note, he states in his commentaries on the 1870 Penal Code of Spain that the law should leave the determination of the amount of respective liabilities to the discretion of the courts. The courts have the competence to determine the exact participation of the principal, accomplice, and accessory in the commission of the crime relative to the other classes because they are able to directly consider the evidence presented and the unique opportunity to observe the witnesses.
>
> We must stress, however, that the courts' discretion should not be untrammeled and must be guided by the principle behind differing liabilities for persons with varying roles in the commission of the crime. The person with greater participation in the commission of the crime should have a greater share in the civil liability than those who played a minor role in the crime or those who had no participation

---

[51] *Saldua v. People*, *supra* note 31.

[52] 607 Phil. 296 (2009).

[53] *Id.* at 330.

in the crime but merely profited from its effects. Each principal should shoulder a greater share in the total amount of indemnity and damages than every accomplice, and each accomplice should also be liable for a greater amount as against every accessory. Care should also be taken in considering the number of principals versus that of accomplices and accessories. If for instance, there are four principals and only one accomplice and the total of the civil indemnity and damages is ₱6,000.00, the court cannot assign two-thirds (2/3) of the indemnity and damages to the principals and one-third (1/3) to the accomplice. Even though the principals, as a class, have a greater share in the liability as against the accomplice — since one-third (1/3) of ₱6,000.00 is ₱2,000.00, while two-thirds (2/3) of ₱6,000.00 is ₱4,000.00 — when the civil liability of every person is computed, the share of the accomplice ends up to be greater than that of each principal. This is so because the two-thirds (2/3) share of the principals — or ₱4,000.00 — is still divided among all the four principals, and thus every principal is liable for only ₱1,000.00.[54]

In *Saldua*, the Court likewise emphasized that the penalty and civil liability imposed upon the accused must be commensurate to the degree of his/her participation in the commission of the crime.[55] The Court held in *Saldua* that an accomplice, like Pascual, should pay lesser civil liability than the principal. Thus, the Court pronounced that the principal must be adjudged liable to pay two-thirds of the civil indemnity and moral damages, while the accomplice should pay one-third portion thereof.[56] As held in *Tampus*, the number of principals and accomplices should likewise be taken into consideration in determining civil liability. Clearly, the imposition of two-thirds of the civil liability to principals and one-third of the civil liability to the accomplices is applicable in cases wherein there is one principal and two or more accomplices, or in a situation wherein the number of the accomplices exceeds that of the principals. To stress, it is crucial to remember, as held in *Tampus*, that each principal should shoulder a greater share

---

[54] *Id.* at 329-330.

[55] *Saldua v. People*, *supra* note 31.

[56] *Id.*

in the total amount of indemnity and damages than every accomplice and each accomplice should also be liable for a greater amount as against every accessory.

In *People vs. Jugueta*[57] (*Jugueta*) the Court ruled that the amount of damages to be paid by the principal for consummated homicide are as follows: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages without exemplary damages being awarded; and (3) ₱50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court.

In Criminal Case No. 98-163621, the CA ordered Pascual to pay the heirs of Rabang ₱50,000.00 as civil indemnity, ₱100,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱2,004,000.00 representing loss of earning capacity. Pursuant to *Tampus* and *Saldua*, in relation to *Jugueta*, Pascual, as accomplice in the crime of homicide, is liable to pay one-third of each civil liability or ₱16,667.67 as civil indemnity, ₱16,667.67 as moral damages, and ₱33,333.33 as actual damages. This apportionment is based on the interpretation that there is only one principal who is liable in the case at bench, similar to *Saldua*. Unfortunately, however, Glicerio and Ceasico remain at large. Evidently, the above-mentioned apportionment of civil liability is more favorable to Pascual.

Furthermore, as to the amount of loss of earning capacity, the Court finds that although the RTC's computation, as affirmed by the CA, is in accordance with jurisprudence,[58] there is necessity to reduce it to one-third to conform with the rationale in *Tampus* and *Saldua*. Article 2206[59] of the Civil Code of the

---

[57] *People v. Jugueta*, 783 Phil. 806 (2016).

[58] See *People v. Wahiman*, 760 Phil. 368 (2015).

[59] Article 2206 of the Civil Code of the Philippines provides:

Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the

Philippines provides that the heirs of the victim are entitled to be indemnified for loss of earning capacity.[60]

The parties stipulated that Rabang was earning an income of ₱10,000.00 a month at the time of his death.[61]

Based on the formula laid down in the case of *People v. Wahiman*,[62] the computation of the loss of earning capacity should be as follows:

Net Earning Capacity = life expectancy x [gross annual income - living expenses]

= 2/3 [80 - age at time of death] x [gross annual income - 50% of gross annual income]

With the established facts that Rabang was 30 years old at the time he was killed by petitioners, and that he was earning ₱10,000 monthly, the compensation for loss of earning capacity is computed as follows:

Net Earning Capacity – income=life expectancy x [gross annual income living expenses]
= 2/3 [80 - 30] x [Php120,000 -Php60,000]
= 33.4 x Php60,000
= ₱2,004,000.00

Since Pascual's civil liability is reduced to conform to *Tampus* and *Saldua*, in relation to *Jugueta*, the Court deems it logical to likewise reduce the amount of loss of earning capacity to be paid by Pascual. Pascual is liable to pay only one-third of ₱2,004,000.00 as he merely acted as an accomplice in the killing of Rabang. Thus, he is only liable for the amount of ₱668,000.00 as compensation for Rabang's loss of earning capacity.

---

latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death.

[60] *People v. Advincula*, 829 Phil. 516, 534 (2018).

[61] *Rollo*, p. 138.

[62] *People v. Wahiman*, *supra* note 64.

Finally, in Criminal Case No. 98-163622, the CA aptly ordered both petitioners to pay Deang the amounts of ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages in line with *Jugueta*. The CA was also correct in reducing the amount of temperate damages from ₱400,000.00 to ₱25,000.00 to be awarded to Deang. While it cannot be denied that Deang suffered pecuniary loss, he failed to offer in evidence statements of accounts to prove actual damages. Thus, in conformity with prevailing jurisprudence, the award of temperate damages of ₱25,000.00 is sufficient.[63]

All monetary awards shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.

WHEREFORE, the petition is **DENIED**. The Decision dated January 18, 2018 of the Court of Appeals in CA-G.R. CR No. 35927 is **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case No. 98-163621, petitioner Erwin Pascual *y* Francisco is guilty as an accomplice in the crime of Homicide. He is hereby **ORDERED** to pay the heirs of Ernanie L. Rabang the following:

(1) ₱16,667.67 as civil indemnity;

(2) ₱16,667.67 as moral damages;

(3) ₱33,333.33 as actual damages;

(4) ₱668,000.00 as compensation for Ernanie L. Rabang's loss of earning capacity; and

In Criminal Case No. 98-163622, petitioners Erwin Pascual *y* Francisco and Wilbert Sarmiento *y* Muñoz a.k.a "Boyet" are guilty of Frustrated Homicide and ordered to jointly pay Joel Deang *y* Sese the following:

(1) ₱30,000.00 as civil indemnity;

(2) ₱30,000.00 as moral damages; and

(3) ₱25,000.00 as temperate damages.

---

[63] *Id.* at 377.

All monetary awards shall earn interest at the rate of 6% *per annum* from the finality of decision until full payment.

SO ORDERED.

Leonen (*Chairperson*), *Hernando*, and *Rosario, JJ.*, concur.

Delos Santos, J.,** on official leave.

THIRD DIVISION

[G.R. No. 246017. November 25, 2020]

MARIA CONSUELO MALCAMPO-REPOLLO, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A RULE 45 PETITION IS LIMITED TO RESOLVING QUESTIONS OF LAW; EXCEPTIONS.— A Rule 45 petition is proper only for resolving questions of law. After all, this Court is not a trier of facts. There are, however, exceptional cases where this Court may review questions of fact:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record[.]

2. ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED; ERROR OF LAW AND ERROR OF FACT, HOW DETERMINED.— In *Spouses Miano v. Meralco*, this Court differentiated a question of law from a question of fact:

> *Bases Conversion Development Authority v. Reyes* distinguished a question of law from a question of fact:

> Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact.

3. CRIMINAL LAW; REPUBLIC ACT (R.A.) NO. 7610; CHILD ABUSE; MODES OF CHILD ABUSE.— In *Sanchez v. People*, this Court clarified that Section 10(a) of Republic Act No. 7610 pertains to four distinct types of child abuse: (a) other acts of child abuse; (b) child cruelty; (c); child exploitation; and (d) commission of acts prejudicial to the child's development. These four acts are separate modes of committing child abuse.

4. ID.; ID.; ID.; ELEMENTS OFCHILD ABUSE.— To sustain a conviction under Section 10(a) of Republic Act No. 7610, the prosecution must establish the following essential elements: (1) the victim's minority; (2) the acts of abuse allegedly committed by the accused against the child; and (3) that these acts are clearly punishable under Republic Act No. 7610.

5. ID.; ID.; ID.; INTENT; INTENT IS NOT AN INDISPENSABLE ELEMENT TO SUSTAIN A CONVICTION FOR CHILD ABUSE, WHICH IS *MALUM PROHIBITUM*.— Child abuse, as penalized under Republic Act No. 7610, is *malum prohibitum*, where intent is not the defining mark in the offense . . . .

> . . .
>
> In other words, intent is not an indispensable element to sustain all convictions under Section 10(a) of Republic Act No. 7610. Generally, in *mala prohibita*, the defense of lack of criminal intent is irrelevant. As long as all the elements of the offense have been established beyond reasonable doubt, conviction ensues.

6. ID.; ID.; ID.; ID.; THE ACT OF DEBASING, DEGRADING, OR DEMEANING A CHILD'S INTRINSIC WORTH AND DIGNITY IS CHARACTERIZED AS A SPECIFIC INTENT IN SOME FORMS OF CHILD ABUSE.— The act of debasing, degrading, or demeaning the child's intrinsic worth and dignity as a human being has been characterized as a specific intent in some forms of child abuse. The specific intent becomes relevant in child abuse when: (1) it is required by a specific provision in Republic Act No. 7610, as for instance, in lascivious conduct; or (2) when the act is described in the information as one that debases, degrades, or demeans the child's intrinsic worth and dignity as a human being.

It must be emphasized that this specific intent is not required for all acts of child abuse under Section 10(a).

7. ID.; ID.; ID.; ID.; SPECIFIC INTENT OF DEBASING, DEGRADING OR DEMEANING THE INHERENT DIGNITY OF CHILD IS NOT REQUIRED IN ALL MODES OF COMMITTING CHILD ABUSE.— We clarify our pronouncement in *Mabunot v. People*, where this Court characterized the violation of Section 10(a) of Republic Act No. 7610 as *malum in se* and seemingly required criminal intent to be established, . . .

Mabunot should be read only in the context of the accused's attempt to evade criminal liability. He argues that there was no malicious intent to injure the minor because he was exchanging punches with another person. Intent was used generally where this Court held that the act was done maliciously, with intent to injure another person. Thus, he was found criminally liable even though the resulting act of child abuse was different from that which he intended. This Court did not require the prosecution to prove the specific intent of debasing, degrading, or demeaning the inherent dignity of the child. It is sufficient that prohibited acts were committed against a child, which acts result in a violation of Republic Act No. 7610:

. . .

Such reading of the law is consistent with Republic Act No. 7610 and its Implementing Rules and Regulations, which did not qualify that all forms of child abuse under Section 10(a) should debase, degrade, and demean the intrinsic worth and

dignity of a child. To limit acts of child abuse only to those that require this specific intent would be inconsistent with the law. It would restrict the law's protection against child abuse victims, when the law intentionally expanded the scope of child abuse to other acts of child abuse to strengthen the State's protection of children's welfare[.]

8. ID.; ID.; ID.; MALTREATMENT BY WAY OF PHYSICAL ABUSE; REMEDIAL LAW; CRIMINAL PROCEDURE; ALLEGATIONS IN AN INFORMATION; WHEN THE RECITATION OF FACTS IN THE INFORMATION MAKES OUT AN OFFENSE OF MALTREATMENT BY WAY OF PHYSICAL ABUSE, THE SPECIFIC INTENT IS NOT INDISPENABLE ELEMENT OF THE OFFENSE.— Given that Section 10(a) encompasses several acts of child abuse that are specifically defined, what is controlling is the recitation of facts in the information that makes out the offense of child abuse:.

Here, the Information specifically charges petitioner with child abuse by way of physical abuse. Petitioner was alleged to have hit, slapped, and pinched her minor student in front of the class . . . .

. . .

The factual allegations in the Information here make out the offense of maltreatment by way of physical abuse. Nothing in the law requires the prosecution to prove the specific intent to debase, degrade, or demean the child's intrinsic worth and dignity for this particular form of child abuse.

The Information sufficiently described all the elements that the law requires for this offense. It was alleged and uncontested that AAA was a 10-year-old minor at the time of the incident. The averments of "hitting, pinching and slapping" constitute child abuse punishable under Section 10(a) of Republic Act No. 7610. There being no allegation of other forms of child abuse that requires specific intent, it is not an indispensable element of the offense to sustain petitioner's guilt.

. . .

To reiterate, the specific intent to debase, degrade, or demean the child's intrinsic worth and dignity is not indispensable for

every act in violation of Section 10(a) of Republic Act No. 7610. Here, since the Information against petitioner describes an offense of maltreatment by way of physical abuse, she can be convicted with child abuse—with or without the specific intent being proven.

9. ID.; ID.; ID.; ID.; THE COMMISSION OF ACTS PREJUDICIAL TO A CHILD'S DEVELOPMENT IS NOT A NECESSARY ELEMENT OF THE PHYSICAL MALTREATMENT BUT A SEPARATE MODE OF COMMISSION.— [P]etitioner faults the prosecution for not presenting a psychological report, and thus failing to prove that the alleged acts prejudiced AAA's normal development. Again, petitioner is mistaken.

Since petitioner was charged with physical maltreatment, her acts need not be proven to have prejudiced AAA's development. The Court of Appeals correctly relied on *Sanchez v. People* in ruling that the commission of acts prejudicial to a child's development is not a necessary element, but a separate mode of commission under Section 10 of Republic Act No. 7610.

Nevertheless, the testimony of AAA's mother, BBB, shows how the incident negatively affected her son. She testified that AAA evaded petitioner at school and was transferred to another section in the middle of the school year:

10. ID.; ID.; ID.; SPECIFIC INTENT; THE SPECIFIC INTENT OF DEBASING, DEGRADING, OR DEMEANING A CHILD'S INTRINSIC WORTH AND DIGNITY IS NOT AN INDISPENSABLE ELEMENT IN ALL VIOLATIONS OF R.A. NO. 7610, BUT COURTS MAY STILL INFER ITS EXISTENCE BASED ON THE NATURE OF THE ACCUSED'S ACT, ESPECIALLY FOR ACTS THAT ARE INTRINSICALLY CRUEL AND EXCESSIVE.— [W]hile the specific intent is not an indispensable element in all violations of Republic Act No. 7610, nothing prevents the courts from still inferring its existence based on the nature of the accused's acts. If the alleged acts are deemed to debase, degrade, or demean the intrinsic worth and dignity of a child, all the more will it be child abuse. This is especially true for acts that are intrinsically cruel and excessive.

11. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE TRIAL COURT'S FACTUAL FINDING S ARE BINDING ON THE SUPREME COURT UNLESS MATERIAL FACTS WERE OVERLOOKED THAT MAY HAVE AFFECTED THE DISPOSITION OF THE CASE.— It is settled that the trial courts' factual findings and conclusions are binding on this Court, absent material facts that were overlooked, but could have affected the disposition of the case:

. . .

Here, petitioner failed to show facts that were overlooked by the lower courts. AAA categorically testified that it was petitioner who hit, slapped, and pinched him in her attempt to discipline him for his alleged misbehavior[.]

12. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; MEDICAL CERTIFICATE; A MEDICAL CERTIFICATE MAY BE ADMITTED EVEN WITHOUT THE TESTIMONY OF THE DOCTOR ISSUING IT WHEN IT WAS NOT OBJECTED TO WHEN OFFERED IN EVIDENCE.— AAA's testimony was corroborated by a medical certificate showing that he sustained an oval bruise on his left trunk.

. . .

While the doctor who examined AAA was not presented, petitioner did not object when the medical certificate was offered in evidence, and thus it was admitted.

13. ID.; ID.; CREDIBILITY OF WITNESSES; MOTIVE; THE TESTIMONY OF A WITNESS DESERVES FULL FAITH AND CREDIT IN THE ABSENCE OF ILL MOTIVE TO TESTIFY AGAINT THE ACCUSED.— The Court of Appeals correctly found that petitioner failed to attribute improper motive to AAA for falsely testifying against her. . . .

There being no evidence that AAA had ill motives to falsely testify against his teacher, his testimony deserves full faith and credit.

14. ID.; ID.; ID.; BIASED TESTIMONY MAY NOT BE GIVEN CREDENCE.— Petitioner does not deny that AAA had been

pinched, but only claims that it was not she who did it. She presents Julie Ann as the person responsible for pinching AAA.

. . . The Court of Appeals was correct in refusing to give credence to Julie Ann's testimony.

A biased testimony is given by a witness whose relation "to the cause or to the parties is such that [they have] an incentive to exaggerate or give false color to [their] statements, or to suppress or to pervert the truth, or to state what is false."

Here, the trial court observed that during preliminary investigation, petitioner asked her students to write their separate accounts of what happened, without the assistance of their parents[.]

15. ID.; ID.; ID.; INCONSISTENCIES IN TESTIMONIES; THE TESTIMONY OF A WITNESS DESERVES SCANT CONSIDERATION WHEN THERE ARE INCONSISTENCIES ON MATERIAL POINTS.— Assuming that Julie Ann's testimony was true, it would still not exonerate petitioner. Such testimony does not include the other acts of child abuse alleged in the Information. AAA established that aside from pinching, petitioner also hit and slapped him in the face.

Even if it were not biased, Julie Ann's testimony still deserves scant consideration for its inconsistencies on material points.

First, Julie Ann has repeatedly changed her account as to the time the incident occurred . . . .

. . .

Second, Julie Ann testified that after lunch, when petitioner started to teach, she was seated next to AAA. She said she sat in front, next to AAA, until the end of their classes at 4:50 p.m. However, this contradicts with petitioner's version that when she returned to the classroom, AAA was no longer in the room and only his bag was left on his seat.

Finally, Julie Ann testified that during their lunch break, none of them were doing the assignment because they were just eating . . . .

. . .

However, petitioner narrates that at around noon that day, she gave a seatwork to her students while she was helping other teachers paint the materials for their *karakol* program.

For these material inconsistencies, the lower courts correctly disregarded Julie Ann's testimony. Even if such testimony was given by a top student, it remains unreliable, inconsistent, and undeserving of evidentiary weight.

APPEARANCES OF COUNSEL

Nacino Ilagan Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

A teacher's physical maltreatment of her minor student constitutes child abuse. The specific intent of demeaning, degrading, and debasing the intrinsic worth and dignity of a child is not an essential element for all forms of child abuse under Section 10(a) of Republic Act No. 7610. The prosecution is only required to prove this specific intent when it is alleged in the information or required by a specific provision of law.

This Court resolves the Petition for Review on Certiorari assailing the Decision[1] and Resolution[2] of the Court of Appeals, which affirmed the conviction[3] of Maria Consuelo Malcampo-

---

[1] *Rollo*, pp. 32-46. The Decision dated October 24, 2018 was penned by Associate Justice Pedro B. Corales, and concurred in by Associate Justices Jane Aurora C. Lantion and Ronaldo Roberto B. Martin of the Special Seventeenth Division of the Court of Appeals.

[2] Id. at 48-49. The Resolution dated March 18, 2019 was penned by Associate Justice Pedro B. Corales, and concurred in by Associate Justices Jane Aurora C. Lantion and Ronaldo Roberto B. Martin of the Former Special Seventeenth Division of the Court of Appeals.

[3] Id. at 54-56. The May 2, 2017 Decision was penned by Presiding Judge Rico Sebastian D. Liwanag of the Regional Trial Court of Makati City, Branch 136.

Repollo (Malcampo-Repollo) for child abuse under Section 10(a) of Republic Act No. 7610.

Malcampo-Repollo, a grade school teacher at the Maximo Estrella Elementary School, was charged with child abuse for allegedly hitting, pinching, and slapping her minor student. The Information against her reads:

> The undersigned Prosecutor accused MARIA CONSUELO REPOLLO y MALCAMPO for the crime of Violation of R.A. 7610 VI sec. 10(a), committed as follows:
>
> On the 20th day of February 2014 in the [C]ity of Makati, the Philippines, accused, a school teacher, did then and there willfully, unlawfully and feloniously commit child abuse, upon complainant [AAA], a ten year old minor, her student, by then and there hitting, pinching and slapping him thereby causing extreme fear upon said child, which acts prejudiced the child's normal development.
>
> CONTRARY TO LAW.[4]

The prosecution presented the minor victim, AAA, his mother BBB, and Police Officer 3 Joan V. Pandoy (PO3 Pandoy) of the Makati Central Police Station's Women and Children Protection Desk.[5]

According to the prosecution, around noon on February 20, 2014, Malcampo-Repollo pinched and hit AAA on his back upon thinking that he was chatting with his seatmate. AAA, already in tears, was then ordered to transfer to another seat.[6] The teacher then left the room for a while and, when she returned, she heard a student tapping their pen. Thinking it was AAA, she approached the student and slapped his face.[7] Terrified and embarrassed, AAA left the classroom and went home to tell his mother what happened.[8]

---

[4] Id. at 53.

[5] Id. at 33.

[6] Id. at 221.

[7] Id. at 34.

[8] Id. at 221.

Mother and son reported the incident to the Women and Children Protection Desk at the Makati Central Police Station, then proceeded to the Philippine General Hospital's Child Protection Unit for a physical examination.[9] A medical report was presented stating that he had an oval bruise on his left trunk.[10] However, the medico-legal officer who examined AAA was not presented.[11]

For its part, the defense presented the testimonies of Malcampo-Repollo and Julie Ann Bacayo (Julie Ann), AAA's classmate. She also presented a certification from the school principal attesting to petitioner's good moral character.[12]

Per the defense, around noon that day, Malcampo-Repollo gave her students seatwork to do while she and the other teachers painted materials for a school program. She instructed one student, Jerico Onasis (Jerico), to be in charge of reporting misbehaving classmates. Jerico reported that AAA and another student were noisy. When she returned, she saw AAA tapping his pen and instructed him to transfer to the seat in front, before going out of the classroom to finish her painting chores. Not long after, Jerico again reported that AAA had gone back to his seat. When the teacher returned, AAA and another student were no longer in their seats, although AAA's bag was still there, so she assumed that he was just in the restroom. To her surprise, at around 5:00 p.m., she was faced with AAA's mother, who shouted, cursed, and threatened to sue her for allegedly slapping and pinching her son.[13]

Malcampo-Repollo denied hitting, slapping, and pinching AAA. Corroborating her testimony, Julie Ann testified that it was she who pinched AAA because he was bothering her.[14]

---

[9] Id. at 34.

[10] Id. at 114.

[11] Id. at 55.

[12] Id. at 54-55.

[13] Id. at 34-35.

[14] Id. at 35.

The Regional Trial Court, in its May 2, 2017 Decision,[15] gave credence to AAA's testimony and convicted Malcampo-Repollo of child abuse:

> **WHEREFORE**, the Court renders judgment finding accused Maria Consuelo Malacampo Repollo **GUILTY** beyond reasonable doubt of the crime of Other Acts of Child Abuse under Republic Act No. 7610. The Court sentences her to suffer the indeterminate penalty of imprisonment of six years of *prision correccional* to seven years of *prision mayor*.
>
> She is directed to indemnify the complaining minor in the following amounts: Php20,000.00 as moral damages, Php20,000.00 as exemplary damages, and Php10,000.00 as temporal damages.
>
> The Court assesses no costs.
>
> **IT IS SO ORDERED.**[16] (Emphasis in the original)

Despite the lack of testimony from a medico-legal officer, the trial court ruled a conviction, saying that such testimony was not required to establish that there was physical and emotional maltreatment of a child.[17] It did not give credence to the certification from the principal stating that there were no pending cases against Malcampo-Repollo, because it had no relation to the crime charged against her.[18] It noted that child abuse is more despicable if committed by a parent or one who stands in *loco parentis*, or in the place of the parent, such as a teacher.[19]

Malcampo-Repollo appealed, but on October 24, 2018, the Court of Appeals affirmed[20] her conviction, and modified the penalty:

---

[15] Id. at 54-56.

[16] Id. at 56.

[17] Id. at 55.

[18] Id. at 56.

[19] Id. at 55.

[20] Id. at 32-46.

WHEREFORE, the instant appeal is **DENIED**. The May 2, 2017 Decision of the Regional Trial Court, Branch 136, Makati City in Criminal Case No. 14-1410-CR is hereby **AFFIRMED** with **MODIFICATION** that accused-appellant Maria Consuelo M. Repollo is sentenced to suffer the indeterminate sentence of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prison mayor*, as maximum.

SO ORDERED.[21] (Emphasis in the original)

The Court of Appeals held that the prosecution proved, through AAA's credible testimony, the physical abuse inflicted by Malcampo-Repollo.[22] It noted that this was enough to secure a conviction, and the prosecution need not prove that the impugned acts prejudiced AAA's development, as it was a different form of child abuse.[23] It also held that Malcampo-Repollo failed to show material inconsistencies and improper motive against AAA to falsely testify against her. It did not give credence to Julie Ann's testimony, deeming it tainted with bias because Malcampo-Repollo, at that time, exercised moral ascendancy over her student.[24]

On March 18, 2019, the Court of Appeals denied[25] Malcampo-Repollo's Motion for Reconsideration. Hence, she filed this Petition.[26]

On August 28, 2019, this Court required the Office of the Solicitor General to file its Comment,[27] which it did, as noted

---

[21] Id. at 46.

[22] Id. at 40-43.

[23] Id. at 45.

[24] Id. at 44.

[25] Id. at 49.

[26] Id. at 3-25.

[27] Id. at 208.

by this Court.[28] Petitioner filed her Reply,[29] as noted by this Court on September 2, 2020.

Petitioner alleges that the prosecution failed to prove her guilt beyond reasonable doubt. She points out how the prosecution failed to present any of Carlito's classmates to corroborate his testimony, making it insufficient and self-serving. She then says that the Court of Appeals merely speculated in saying she had moral ascendancy over Julie Ann, a top student who cannot easily be swayed or influenced.[30] She insists that the student's testimony was positive and clear, with no hint of bias in her favor.[31]

Petitioner faults the prosecution for failing to present the attending physician who executed the medico-legal report. A medical report, she says, cannot be considered substantial evidence to prove that she inflicted the injuries described in it. While it may prove that Carlito suffered physical abuse, petitioner says it does not prove that she was the one who caused it. Assuming that she did, she maintains that she can only be liable for slight physical injuries, and not other acts of child abuse under Section 10(a) of Republic Act No. 7610.[32]

Petitioner relies on *Bongalon v. People*,[33] among others, and argues that the prosecution failed to prove that petitioner's laying of hands was intended to debase, degrade, or demean Carlito's intrinsic worth or dignity, there being no evidence that these acts negatively affected his normal course of development. It also was not shown that he suffered psychological distress,

---

[28] Id. at 230.

[29] Id. at 238-254. The September 2, 2020 Notice is not yet included in the *Rollo*.

[30] Id. at 14-15. Petition.

[31] Id. at 15-16.

[32] Id. at 18.

[33] 707 Phil. 11 (2013) [Per J. Bersamin, First Division].

emotional suffering, or trauma.[34] Thus, she says that the prosecution failed to establish the crucial element of intent required for child abuse under Section 10(a) of Republic Act No. 7610.[35]

For its part, the Office of the Solicitor General argues that the Petition must be dismissed outright for raising factual matters beyond the scope of a Rule 45 petition.[36] More important, it maintains that the prosecution was able to establish petitioner's guilt, since her acts of pinching, hitting the back, and slapping AAA "were unnecessary, violent[,] and excessive."[37] It claims that her acts were aggravated by the emotional trauma Carlito experienced after being embarrassed before his classmates.[38]

The Office of the Solicitor General adds that petitioner cannot rely on *Bongalon*, because unlike that case, the Information against her did not allege that the acts were intended to demean the intrinsic worth and dignity of the child as a human being. Moreover, in *Bongalon*, the accused's acts were deemed committed in the spur of the moment, which cannot be said for petitioner.[39]

Petitioner reiterates her position in her Reply. She argues that she has established the exemptions to allow a review of the factual questions raised. She then reiterates that it was only Carlito's testimony that directly implicated her in the offense.[40] While his testimony may be clear, it is not sufficient to convict her without corroborative testimony.[41] She insists that Julie Ann's

---

[34] *Rollo*, pp. 19-21.

[35] Id. at 23.

[36] Id. at 221-223.

[37] Id. at 224.

[38] Id.

[39] Id. at 225.

[40] Id. at 239-240.

[41] Id. at 241 and 246.

testimony deserves credence, and that the finding of her supposed moral ascendancy over the student was only speculative.[42]

Moreover, petitioner says that AAA's mother testified that she saw no signs indicating that her child was hit or slapped in the face.[43] There being reasonable doubt, petitioner says she should have been acquitted.[44]

This Court resolves the following issues:

First, whether or not this Court can resolve factual issues in a Rule 45 petition; and

Second, whether or not the prosecution established all the elements of child abuse under Section 10(a) of Republic Act No. 7610.

We deny the Petition.

I

A Rule 45 petition is proper only for resolving questions of law. After all, this Court is not a trier of facts. There are, however, exceptional cases where this Court may review questions of fact:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is

---

[42] Id. at 241.

[43] Id. at 243.

[44] Id. at 246-248.

premised on the supposed absence of evidence and is contradicted by the evidence on record[.][45] (Citations omitted)

In *Spouses Miano v. Meralco*,[46] this Court differentiated a question of law from a question of fact:

> *Bases Conversion Development Authority v. Reyes* distinguished a question of law from a question of fact:
>
> > Jurisprudence dictates that there is a "question of law" when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a "question of fact" when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of "law" or "fact" is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact. In other words, where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[47] (Citations omitted)

Here, petitioner admits that she raises factual questions, but insists that the lower courts should have given credence to Julie Ann's testimony that it was she, and not petitioner, who pinched AAA.[48] Petitioner insists that the prosecution's evidence was insufficient to sustain her conviction. Thus, she invokes the following exceptions: (1) that the Court of Appeals misappreciated facts; (2) that its findings were grounded entirely on speculation, surmises, or conjectures; and (3) that it failed

---

[45] *Pascual v. Burgos*, 776 Phil. 167, 183 (2016) [Per J. Leonen, Second Division].

[46] 800 Phil. 118 (2016) [Per J. Leonen, Second Division].

[47] Id. at 122.

[48] *Rollo*, pp. 240-241.

to consider relevant facts that would justify a different conclusion.[49]

However, a review of the records shows that the lower courts' findings are supported by the evidence on record and consistent with relevant jurisprudence. The Court of Appeals did not gravely abuse its discretion in sustaining petitioner's conviction. Petitioner's guilt for physically maltreating her student has been established beyond reasonable doubt. Nevertheless, we expound on the Petition to clarify the elements of child abuse for guidance of the Bench and Bar.

II

Article VI, Section 10(a) of Republic Act No. 7610 provides:

SECTION 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development*. -

(a) Any person who shall ***commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development*** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prison mayor* in its minimum period. (Emphasis supplied)

In *Sanchez v. People*,[50] this Court clarified that Section 10(a) of Republic Act No. 7610 pertains to four distinct types of child abuse: (a) other acts of child abuse; (b) child cruelty; (c); child exploitation; and (d) commission of acts prejudicial to the child's development. These four acts are separate modes of committing child abuse:

In this connection, our ruling in *Araneta v. People* is instructive:

> As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b)

---

[49] Id. at 239-240.

[50] 606 Phil. 762 (2009) [Per J. Nachura, Third Division].

> child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.
>
> Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that *there are four punishable acts therein*. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. *The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts*, because an analysis of the entire context of the questioned provision does not warrant such construal.[51] (Emphasis supplied, citations omitted)

To sustain a conviction under Section 10(a) of Republic Act No. 7610, the prosecution must establish the following essential elements: (1) the victim's minority; (2) the acts of abuse allegedly committed by the accused against the child; and (3) that these acts are clearly punishable under Republic Act No. 7610.[52]

Petitioner insists that she could not have committed child abuse under Section 10(a) of Republic Act No. 7610 because

---

[51] Id. at 777.

[52] *Del Poso v. People*, 802 Phil. 713,722 (2016) [Per J. Peralta, Third Division].

she did not have the specific intent "to debase, degrade or demean the intrinsic worth and dignity of the child[.]"[53] She concludes that she is only liable, if at all, for slight physical injuries under the Revised Penal Code.

However, as will be discussed, intent is not essential in all violations of Republic Act No. 7610. Only when the information alleges that there was this specific intent, or when the provision of law demands it, must the prosecution prove its existence. Certainly, that an act must be shown to debase, degrade, or demean Carlito's intrinsic worth and dignity is not an essential element to prove the offense with which petitioner was charged.

II (A)

Child abuse, as penalized under Republic Act No. 7610, is *malum prohibitum*, where intent is not the defining mark in the offense:

> Republic Act No. 7610 is a measure geared to provide a strong deterrence against child abuse and exploitation and to give a special protection to children from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. It must be stressed that the crime under Republic Act No. 7610 is *malum prohibitum*. Hence, the intent to debase, degrade, or demean the minor is not the defining mark. Any act of punishment that debases, degrades, and demeans the intrinsic worth and dignity of a child constitutes the offense.[54] (Citations omitted)

In other words, intent is not an indispensable element to sustain all convictions under Section 10(a) of Republic Act No. 7610. Generally, in *mala prohibita*, the defense of lack of criminal intent is irrelevant. As long as all the elements of the offense have been established beyond reasonable doubt, conviction ensues.

---

[53] *Rollo*, pp. 19-20.

[54] *Lucido v. People*, 815 Phil. 646, 664 (2017) [Per J. Leonen, Second Division].

The act of debasing, degrading, or demeaning the child's intrinsic worth and dignity as a human being has been characterized as a specific intent in some forms of child abuse.[55] The specific intent becomes relevant in child abuse when: (1) it is required by a specific provision in Republic Act No. 7610, as for instance, in lascivious conduct;[56] or (2) when the act is described in the information as one that debases, degrades, or demeans the child's intrinsic worth and dignity as a human being.

It must be emphasized that this specific intent is not required for all acts of child abuse under Section 10(a). Section 3(b) of the law defines child abuse as maltreatment that consists in any of the following:

> (b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes ***any*** of the following:
>
> (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
>
> (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
>
> (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; ***or***
>
> (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. (Emphasis supplied)

---

[55] *Bongalon v. People*, 707 Phil. 11, 20-23 (2013) [Per J. Bersamin, First Division].

[56] Implementing Rules and Regulations of Republic Act No. 7610 (I993), sec. 2(h) states:

> h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

Section 2 of its Implementing Rules and Regulations states:

SECTION 2. Definition of Terms. – ...

....

(b) "Child Abuse" refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child;

c) "Cruelty" refers to any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

(d) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm suffered by a child.

Given that Section 10(a) encompasses several acts of child abuse that are specifically defined, what is controlling is the recitation of facts in the information that makes out the offense of child abuse:

Appellant contends that, after proof, the act should not be considered as child abuse but merely as slight physical injuries defined and punishable under Article 266 of the Revised Penal Code. Appellant conveniently forgets that when the incident happened, VVV was a child entitled to the protection extended by R.A. No. 7610, as mandated by the Constitution. As defined in the law, child abuse includes physical abuse of the child, whether the same is habitual or not. The act of appellant falls squarely within this definition. We, therefore, cannot accept appellant's contention.

In the same manner, we reject appellant's claim that the Information led against him was defective. In *Resty Jumaquio v. Hon. Joselito C. Villarosa*, we held that *what controls is not the title of the information or the designation of the offense but the actual facts recited therein*. Without doubt, the averments in the Information clearly make out the offense of child abuse under Section 10 (a) of R.A. No. 7610. The following were alleged: (1) the minority of VVV; (2) the acts constituting physical abuse, committed by appellant against VVV; and (3) said acts are clearly punishable under R.A. No. 7610 in relation

to P.D. No. 603. Indeed, as argued by the OSG, the commission of the offense is clearly recited in the Information, and appellant cannot now feign ignorance of this.[57] (Emphasis supplied, citations omitted)

We clarify our pronouncement in *Mabunot v. People*,[58] where this Court characterized the violation of Section 10(a) of Republic Act No. 7610 as *malum in se* and seemingly required criminal intent to be established, stating:

> "When the acts complained of are inherently immoral, they are deemed *mala in se*, even if they are punished by a special law. Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed."
>
> The petitioner was convicted of violation of Section 10 (a), Article VI of R.A. No. 7610, a special law. However, physical abuse of a child is inherently wrong, rendering material the existence of a criminal intent on the part of the offender.
>
> In the petitioner's case, criminal intent is not wanting. Even if the Court were to consider for argument's sake the petitioner's claim that he had no design to harm Shiva, when he swang (sic) his arms, he was not performing a lawful act. He clearly intended to injure another person. However, it was not Dennis but Shiva, who ended up with a fractured rib. Nonetheless, the petitioner cannot escape liability for his error. Indeed, criminal liability shall be incurred by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.[59] (Citations omitted)

Mabunot should be read only in the context of the accused's attempt to evade criminal liability. He argues that there was no malicious intent to injure the minor because he was exchanging punches with another person. Intent was used generally where this Court held that the act was done maliciously, with intent to injure another person. Thus, he was found criminally liable even though the resulting act of child abuse was different from

---

[57] *Sanchez v. People*, 606 Phil. 762, 778 (2009) [Per J. Nachura, Third Division].

[58] 795 Phil. 453 (2016) [Per J. Reyes, Third Division].

[59] Id. at 464.

that which he intended. This Court did not require the prosecution to prove the specific intent of debasing, degrading, or demeaning the inherent dignity of the child. It is sufficient that prohibited acts were committed against a child, which acts result in a violation of Republic Act No. 7610:

> Child abuse refers to the infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child. Physical injury includes but is not limited to lacerations, fractured bones, bums, internal injuries, severe injury or serious bodily harm suffered by a child.
>
> It is clear that Shiva was 14 years old when she received the blow, which fractured her rib. Being a child, she is under the protective mantle of R.A. No. 7610, which punishes maltreatment of a child, whether the same be habitual or not. Moreover, the Implementing Ru1es and Regu1ations of R.A. No. 7610 even explicitly refer to fractured bones as falling within the coverage of physical injuries, which may be inflicted on a child, for which an accused shall be held liable. Further, under R.A. No. 7610, stiffer penalties are prescribed to deter and prevent violations of its provisions.[60] (Citations omitted)

Such reading of the law is consistent with Republic Act No. 7610 and its Implementing Rules and Regulations, which did not qualify that all forms of child abuse under Section 10(a) should debase, degrade, and demean the intrinsic worth and dignity of a child. To limit acts of child abuse only to those that require this specific intent would be inconsistent with the law. It would restrict the law's protection against child abuse victims, when the law intentionally expanded the scope of child abuse to other acts of child abuse to strengthen the State's protection of children's welfare:

> The courts must stay true to its mandate of protecting the welfare of children. In *Araneta v. People*, this Court emphasized:
>
> Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival

[60] Id. at 465.

of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and oilier conditions prejudicial to their development." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. *Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development*[.'][61] (Emphasis supplied, citations omitted)

In *Patulot v. People*:[62]

Indeed, it cannot be denied that AAA and BBB are children entitled to protection extended by R.A. No. 7610. Time and again, the Court has stressed that R.A. No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "[t]he State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the RPC and Presidential Decree No. 603 or The Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their

---

[61] *Fernandez v. People*, G.R. No. 217542, November 21, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64751> [Per J. Leonen, Third Division].

[62] G.R. No. 235071, January 7, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64680> [Per J. Peralta, Third Division].

commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development."[63] (Citations omitted)

Here, the Information specifically charges petitioner with child abuse by way of physical abuse. Petitioner was alleged to have hit, slapped, and pinched her minor student in front of the class:

> The undersigned Prosecutor accused MARIA CONSUELO REPOLLO Y MALCAMPO for the crime of Violation of RA 7610 VI sec, 10 (a), committed as follows:
>
> On the 20th day of February 2014, in the [C]ity of Makati, the Philippines, accused, a school teacher, did then and there willfully, unlawfully and feloniously commit child abuse, upon complainant AAA, a ten year old minor, her student, by then and there *hitting, pinching and slapping him thereby causing extreme fear upon said child*, which acts prejudiced the child's normal development.
>
> CONTRARY TO LAW.[64] (Emphasis supplied)

The factual allegations in the Information here make out the offense of maltreatment by way of physical abuse. Nothing in the law requires the prosecution to prove the specific intent to debase, degrade, or demean the child's intrinsic worth and dignity for this particular form of child abuse.

The Information sufficiently described all the elements that the law requires for this offense. It was alleged and uncontested that AAA was a 10-year-old minor at the time of the incident. The averments of "hitting, pinching and slapping" constitute child abuse punishable under Section 10(a) of Republic Act No. 7610. There being no allegation of other forms of child abuse that requires specific intent, it is not an indispensable element of the offense to sustain petitioner's guilt.

---

[63] Id.

[64] *Rollo*, p. 53.

II (B)

Again, petitioner relies on *Bongalon v. People*[65] in arguing that the specific intent "to debase, degrade, or demean the intrinsic worth and dignity of the child"[66] is an essential element for every violation of Section 10(a) of Republic Act No. 7610. She contends that since the prosecution was not able to establish this element, she could only be liable, if at all, for slight physical injuries.[67] Petitioner's argument is untenable.

A review of *Bongalon* and subsequent jurisprudence shows that the specific intent is not an indispensable requirement of physical maltreatment as a form of child abuse.

In *Bongalon*, this Court held that the laying of hands on a child is not always child abuse. There, the accused was motivated by a desire to protect his daughters against the minors who were trying to hurt them. He was acquitted after this Court applied the *pro reo* doctrine in ruling that the prosecution was not able to establish the specific intent of debasing, degrading, or demeaning the intrinsic worth and dignity of the complainants. He was only convicted of slight physical injuries.[68]

A few years later, this Court in *Jabalde v. People*[69] seemingly characterized the specific intent of debasing, demeaning, and degrading the inherent dignity of a child as an essential element to sustain a conviction under Section 10(a) of Republic Act No. 7610:

> In the recent case of *Bongalon v. People*, the Court expounded the definition of "child abuse" being referred to in R.A. No. 7610. In that case, therein petitioner was similarly charged, tried, and convicted by the lower courts with violation of Section 10 (a), Article

---

[65] 707 Phil. 11 (2013) [Per J. Bersamin, First Division].

[66] Id. at 15.

[67] *Rollo*, pp. 19-20.

[68] *Bongalon v. People*, 707 Phil. 11, 20 23 (2013) [Per J. Bersamin, First Division].

[69] 787 Phil. 255 (2016) [Per J. Reyes, Third Division].

VI of R.A. No. 7610. The Court held that only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse, otherwise, it is punished under the RPC, to wit:

. . . . . .

Jabalde was accused of slapping and striking Lin, hitting the latter on his nape, and immediately thereafter, choking the said offended party causing the latter to sustain injuries. However, the records of the case do not show that Jabalde intended to debase, degrade or demean the intrinsic worth and dignity of Lin as a human being.

Black's Law Dictionary defined debasement as "the act of reducing the value, quality, or purity of something." Degradation, on the other hand, is "a lessening of a person's or thing's character or quality." Webster's Third New International Dictionary defined demean as "to lower in status, condition, reputation, or character."

The laying of the hands on Lin was an offshoot of Jabalde's emotional outrage after being informed that her daughter's head was punctured, and whom she thought was already dead. In fact, her vision got blurred and she fainted. When she returned into consciousness, she sat on her chair in front of the board for about five to ten minutes. Moreover, the testimony of the examining physician, Dr. Munoz, belied the accusation that Jabalde, with cruelty and with intent, abused, maltreated and injured Lin, to wit:

> [T]he abrasions could have been caused by a hard object but mildly inflicted. She also testified that the linear abrasions were signs of fingernail marks. She did not notice other injuries on the body of the victim except those on his neck. Moreover, the abrasions were greenish in color, signifying that they were still fresh.

It would be unforeseeable that Jabalde acted with cruelty when prosecution's witness herself testified that the abrasions suffered by Lin were just "mildly inflicted." If Jabalde indeed intended to abuse, maltreat and injure Lin, she would have easily hurt the 7-year old boy with heavy blows.

As a mother, the death of her child, who has the blood of her blood, and the flesh of her flesh, is the most excruciating idea that

a mother could entertain. The spontaneity of the acts of Jabalde against Lin is just a product of the instinctive reaction of a mother to rescue her own child from harm and danger as manifested only by mild abrasions, scratches, or scrapes suffered by Lin, thus, negating any intention on inflicting physical injuries. *Having lost the strength of her mind, she lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse. In fine, the* ***essential*** *element of intent was not established with the prescribed degree of proof required for a successful prosecution under Section 10 (a), Article VI of R.A. No. 7610.*[70] (Emphasis supplied, citations omitted)

A close reading of *Jabalde* shows that the specific intent of debasing, degrading, and demeaning the inherent dignity of the child was essential because the information charged the accused with cruelty.[71] Cruelty is defined as "any act by word or deed which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being."[72] To prove the elements of child abuse for cruelty, it was essential for the prosecution to prove specific intent. In failing to do so, the accused in *Jabalde* was only held liable for slight physical injuries.

---

[70] Id. at 269-271.

[71] Id. at 260.

The information in *Jabalde* reads:

That on December 13, 2000 at 9:00 o'clock in the morning, more or less, in Barangay Cawitan, Santa Catalina, Negros Oriental, and within the jurisdiction of the Honorable Court, [Jabalde], *with cruelty and with intent to abuse, maltreat and injure one* LIN J. BITOON, 8 years of age, did then and there willfully, unlawfully and feloniously slap and strike said Lin J. Bitoon, hitting said Lin J. Bitoon on the latter's nape; and immediately thereafter[,] [c]hoke the said offended party, causing the latter to sustain the following injuries: Abrasions: Two (2), linear 1 cm in length at the base of the right mandibular area; One (1), linear 1 inch at the right lateral neck; Two (2), linear 1 cm in length at the anterior neck; and Four (4), minute circular at the left lateral neck, which acts of sa[i]d accused caused the said offended part[y] not only physical but also emotional harm prejudicial to his development. CONTRARY to the aforesaid. (Emphasis supplied)

[72] Implementing Rules and Regulation of Republic Act No. 7610, sec. 2(c).

This ruling was adopted in *Escolano v. People*,[73] where the accused who uttered invectives while brandishing his bolo against minors was convicted only of other light threats and not child abuse. It was found that the accused's acts were done in the heat of anger. Relying on *Bongalon* and *Jabalde*, this Court upheld her conviction for other light threats because the prosecution failed to prove the specific intent to debase, demean, and degrade the intrinsic worth of the minor victims:

> Verily, Sec. 10 (a) of R.A. No. 7610, in relation thereto, Sec. 3 (b) of the same law, highlights that in child abuse, the act by deeds or words *must* debase, degrade or demean the intrinsic worth and dignity of a child as a human being. Debasement is defined as the act of reducing the value, quality, or purity of something; degradation, on the other hand, is a lessening of a person's or thing's character or quality; while demean means to lower in status, condition, reputation or character.
>
> *When this element of intent to debase, degrade or demean is present, the accused shall be convicted of violating Sec. 10 (a) of R.A. No. 7610*, which carries a heavier penalty compared to that of slight physical injuries or other light threats under the RPC.
>
> In *Bongalon v. People*, the petitioner therein was charged under Sec. 10 (a) of R.A. No. 7610 because he struck and slapped the face of a minor, done at the spur of the moment and in the heat of anger. The Court ruled that only when the accused intends to debase, degrade or demean the intrinsic worth of the child as a human being should the act be punished with child abuse under Sec. 10 (a) of R.A. No. 7610. Otherwise, the act must be punished for physical injuries under the RPC. It was emphasized therein that the records must establish that there must be a specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being, being the essential element in child abuse. Since the prosecution failed to establish the said intent, the petitioner in that case was convicted only of slight physical injuries.
>
> Similarly, in *Jabalde v. People*, the petitioner therein slapped, struck, and choked a minor as a result of the former's emotional

---

[73] G.R. No. 226991, December 10, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64821> [Per J. Gesmundo, Third Division].

rage. The Court declared that the absence of any intention to debase, degrade or demean the intrinsic worth of a child victim, the petitioner's act was merely slight physical injuries punishable under the RPC since there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance. Underscored is that the essential element of intent must be established with the prescribed degree of proof required for a successful prosecution under Sec. 10 (a) of R.A. No. 7610.[74] (Emphasis supplied, citations omitted)

Similar to *Jabalde*, the information in *Escolano* charged the accused with child abuse and cruelty for committing acts that debase, demean, and degrade the intrinsic worth and dignity of the minor victims.[75] Thus, the specific intent was required to sustain the accused's conviction for child abuse.

Patulot v. People[76] later clarified the ruling in *Bongalon*. It explained that the specific intent of debasing, demeaning, and degrading the intrinsic worth of the child was relevant in *Bongalon* because it was alleged in the information. However, in *Patulot*, the informations[77] did not include this specific intent

---

[74] Id.

[75] Id.

The information in *Escolano* reads:

That on or about the 30th day of May 2009 in [XXX], Philippines, the above-named accused, did then and there wilfully, unlawfully, and feloniously commit *an act of child abuse/cruelty* against [AAA], 11 years old; [BBB], 9 years old; [CCC], 8 years old, all minors, by then and there making hacking gestures with a bolo and uttering insults and invectives at them, *which act debases, demeans and degrades the intrinsic worth and dignity of the said minors as human being[s]*, to the damage and prejudice of the said offended parties. CONTRARY TO LAW (Emphasis supplied)

[76] G.R. No. 235071, January 7, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64680> [Per J. Peralta, Third Division].

[77] Id.

The informations in *Patulot* read:

(Criminal Case No. 149971)

That on or about the 14th day of November 2012, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-

in the allegations of child abuse. Thus, specific intent was not considered an essential element of the offense. In convicting the accused, this Court was satisfied that the prosecution established all the necessary allegations in the information constituting child abuse:

> It is, therefore, clear from the foregoing that when a child is subjected to physical abuse or injury, the person responsible therefor can be held liable under R.A. No. 7610 by establishing the essential facts above. Here, the prosecution duly proved the following allegations in the Information charging Patulot of child abuse: (1) the minority of both AAA and BBB; (2) the acts committed by Patulot constituting physical abuse against AAA and BBB; and (3) the fact that said acts are punishable under R.A. No. 7610. In particular, it was clearly established that at the time of the incident, AAA and BBB were merely three (3) years old and two (2) months old, respectively; that Patulot consciously poured hot cooking oil from a casserole on CCC, consequently injuring AAA and BBB; and that said act constitutes physical abuse specified in Section 3 (b) (l) of R.A. No. 7610.

On this score, Patulot contends that on the basis of our pronouncement in *Bongalon*, she cannot be convicted of child abuse because it was not proven that she intended to debase, degrade, or demean the intrinsic worth and dignity of AAA and BBB as human beings. Her reliance on said ruling, however, is misplaced. In *Bongalon*,

---

named accused, did, then and there wilfully, unlawfully, and feloniously commit acts of child abuse upon one AAA, 5 a three (3)-year-old minor, by throwing on him a boiling oil, thereby inflicting upon said victim-minor physical injuries, which acts are inimical and prejudicial to the child's normal growth and development.

CONTRARY TO LAW.

(Criminal Case No. 149972)

That on or about the 14th day of November 2012, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously commit acts of child abuse upon one BBB, a two (2) month old baby, by throwing on her a boiling oil, thereby inflicting upon said victim-minor physical injuries, which acts are inimical and prejudicial to the child's normal growth and development.

CONTRARY TO LAW.

the Information specifically charged George Bongalon, petitioner therein, of committing acts which "are prejudicial to the child's development and which demean the intrinsic worth and dignity of the said child as a human being." Thus, we ruled that he can only be held liable for slight physical injuries instead of child abuse in the absence of proof that he intended to humiliate or "debase the 'intrinsic worth and dignity'" of the victim.

A cursory review of the Informations in the instant case, however, reveals no similar allegation that Patulot's acts debased, degraded, or demeaned the intrinsic worth and dignity of AAA and BBB as human beings. Instead, they charged Patulot for willfully committing acts of child abuse on AAA and BBB "by throwing on [them] a (sic) boiling oil, thereby inflicting upon said victim-minor physical injuries, which acts are inimical and prejudicial to the child's normal growth and development." Accordingly, the RTC and the CA duly found that this allegation in the Informations was adequately established by the prosecution. It bears stressing that Patulot did not even deny the fact that she threw boiling oil on CCC which likewise fell on AAA and BBB. Clearly, her actuations causing physical injuries on babies, who were merely three (3) years old and two (2) months old at the time, are undeniably prejudicial to their development. In the words of the trial court, Patulot's acts, which practically burned the skin of AAA and BBB, left visible scars that are most likely to stay on their faces and bodies for the rest of their lives. She cannot, therefore, be allowed to escape liability arising from her actions.[78] (Citations omitted)

However, in *Calaoagan v. People*,[79] the prosecution's failure to establish the specific intent of debasing, degrading, or demeaning the child's intrinsic worth and dignity—despite it not being alleged in the informations—warranted a conviction only of slight physical injuries, and not child abuse:

In this case, the Court finds that the prosecution did not present any iota of evidence to show petitioner's intent to debase, degrade, or demean the intrinsic worth of the child victim. The records do not

---

[78] Id.

[79] G.R. No. 222974, March 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65231> [Per J. Gesmundo, First Division].

show that petitioner's act of hitting the victims had been intended to place the latter in an embarrassing, shameful, and demeaning situation. There was no indication that petitioner had any specific intent to humiliate and degrade AAA and BBB.

On the contrary, the Court finds that petitioner inflicted the injuries in the heat of argument. AAA and BBB claim that it was petitioner's group that first annoyed the former's group; while petitioner claims that it was AAA and BBB's group that initiated the shouting match. Nevertheless, it is clear that the altercation between AAA, BBB, and petitioner only occurred when their groups met on the street without any prior confrontation.

As observed in the cases of *Bongalon*, *Jabalde*, *and Escolano*, when the infliction of physical injuries against a minor is done at the spur of the moment, it is imperative for the prosecution to prove a specific intent to debase, degrade, or demean the intrinsic worth of the child; otherwise, the accused cannot be convicted under Sec. 10 (a) of R.A. No. 7610. Verily, as the prosecution in this case failed to specify any intent to debase, degrade, or demean the intrinsic worth of AAA and BBB, petitioner cannot be held criminally liable under Sec. 10 (a) of R.A. No. 7610.

Verily, as the prosecution in this case failed to specify any intent to debase, degrade, or demean the intrinsic worth of AAA and BBB, petitioner cannot be held criminally liable under Sec. 10 (a) of R.A. No. 7610.[80]

In *Calaoagan*, the informations refer to the accused's physical maltreatment of two minors by hitting one of them with a stone and the other being punched in the face and head.[81] These injuries

---

[80] Id.

[81] Id. The informations in *Calaoagan* read:

Criminal Case No. 4877-R:

That on or about the 31st day of October, 2004 at around 12:00 midnight, in Brgy. Poblacion, Municipality of Rosales, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully, feloniously and for no apparent reason[,] physical[ly] maltreat[ed] the complainant AAA, a minor of about 15 years of age[,] by hitting him with a stone on his left shoulder, thus place (sic) him in an embarrassing (sic) and shameful situation in the eyes of the public. Contrary to Article VI, Section 10(a), Republic Act 7610.

were found to have been inflicted during a confrontation, done in the heat of an argument and at the spur of the moment. Due to the similarity of circumstances, this Court applied *Bongalon, Jabalde*, and *Escolano*, and held that the prosecution was required to establish specific intent to sustain a conviction under Section 10(a) of Republic Act No. 7610.

Calaoagan is a stray ruling. The specific intent should not have been required because it was not alleged in the informations. Again, the commission of any act or deed that debases, degrades, or demeans the intrinsic worth and dignity of a child is only one of the ways by which child abuse may be committed. In imposing specific intent for physical maltreatment, *Calaoagan* imposes a requirement that is not in the law.

In the most recent case of *Delos Santos v. People*,[82] this Court upheld the accused's conviction for child abuse in hitting and punching a minor. Notably, the information charged him with child abuse for cruelty, and physical, psychological, and emotional maltreatment.[83] This Court inferred the specific intent

---

Criminal Case No. 4878-R:

That on or about the 31st day of October, 2004, at around 12:00 o'clock midnight, in Brgy. Poblacion, Municipality of Rosales, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously and for no apparent reason[,] physically maltreat the complainant BBB, a minor of about 17 years of age[,] by punching his face and head, thus place (sic) him in an embarrassing (sic) and shameful situation in the eyes of the public. Contrary to Article VI, Section 10(a), Republic Act 7610

[82] G.R. No. 227581, January 15, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66101> [Per J. Reyes, First Division].

[83] Id. The information in Delos Santos read:

That on or about August 31, 2007, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, together with other person whose name, identity, and present whereabout[s] still unknown, conspiring, confederating and mutually helping one another, without any justifiable cause, did then and there willfully, unlawfully, and feloniously maul one AAA, 17 years old, hitting the latter on the face and chest, thereby inflicting upon the latter physical injuries which injuries required medical

of debasing, degrading, and demeaning the intrinsic worth and dignity of the victim when the accused followed the victim and his brother on their way home, challenged them to a fight, hurled invectives at them, and subsequently refused to apologize at the barangay. This Court held that the acts were committed to take revenge against their mother who filed a case against the accused:

> Intent is a state of mind that accompanies the act. Since intent is an internal state, the same can only be verified through the external acts of the person. In this case, there are several circumstances that reveal the intent of Delos Santos to debase or degrade the intrinsic worth of AAA.
>
> *First*, AAA and Daluro testified that Delos Santos' group approached them and Bob said "nag-iinit na ako." The initial move came from Delos Santos' group without provocation on the part of AAA or Daluro. The act of approaching with the words "nag-iinit na ako" indicates that there was intent to confront or to challenge AAA and Daluro to a fight. This is contrary to Delos Santos' claim that the incident was accidental.
>
> *Second*, Bob threatened to hit Daluro with a stone and Delos Santos attempted to punch him, which unfortunately landed on AAA. Then Bob punched AAA on the chest causing her to hit a wall. These acts are obviously aimed to hurt, harass, and to cause harm, either physically, mentally, emotionally, or psychologically, on AAA and Daluro.
>
> *Third*, Bob said "tama lang yon sa inyo pagtripan dahil dinemanda n'yo kami." Then Delos Santos hurled invectives at AAA and Daluro. Their words reveal that they were motivated by revenge, which is their justification for their actions. Hurling invectives on a person is debasing, degrading, and demeaning as it reduces a person's worth.
>
> *Fourth*, Delos Santos' group followed AAA and Daluro home, which implies that they had no intention to stop their misdeeds had it not been for the timely intervention of AAA's mother.

---

attendance for a period of less than (9) days and incapacitated said victim from performing her habitual work for the same period of time, thereby subjecting said minor to psychological and physical abuse, cruelty and emotional maltreatment.

Lastly, Delos Santos and Bob did not apologize to AAA and to Daluro during the confrontation at the barangay. If indeed the incident was unintentional, they could have explained so during the confrontation. However, there was no trace of remorse from them. Delos Santos and Bob's words and actions characterized physical and psychological child abuse, and emotional maltreatment, all of which debase, degrade, and demean the intrinsic worth and dignity of a child as a human being.

The Court resolves to deny the petition after finding that the CA did not commit any reversible error in the assailed decision and resolution. The CA had exhaustively explained the law and jurisprudence, which were the bases of its decision and resolution. Both the trial court and the appellate court are consistent in their findings of fact that Delos Santos is guilty beyond reasonable doubt of slight physical injuries in relation to R.A. No. 7610.

Delos Santos was mistaken when he cited the case of *Bongalon v. People*. The factual backdrop of that case is different from the instant case. In Bongalon, the accused was convicted of the crime of slight physical injuries instead of violation of Section 10 (a) of R.A. No. 7610, because of the absence of intent to debase the intrinsic worth and dignity of the child. The physical harm committed against the minor was committed "at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters[.]"

Here, the accosting and laying of hands are deliberately intended by Delos Santos and his group. As interpreted by the CA, the word "*pagtripan*" signified an intention to debase or degrade that did not result from an unexpected event. The acts of Delos Santos were offshoots of an intent to take revenge arising from the conflict existing between his mother and AAA's mother. Delos Santos did not lose his self-control and the acts were not done at the spur of the moment.[84] (Citations omitted)

Bongalon states that not every instance of laying of hand against a child constitutes child abuse. The subsequent cases of *Jabalde, Escolano, Patulot*, and *Delos Santos* show that the specific intent of debasing, demeaning, and degrading the inherent

---

[84] Id.

dignity of a child is not an element for all kinds of child abuse. It is what the information alleges as acts constituting child abuse that govern. If the form of child abuse alleged requires specific intent as defined by law, the prosecution is required to prove it. If the information does not allege the specific intent, or if it is not required by law, it need not be established.

Of course, while the specific intent is not an indispensable element in all violations of Republic Act No. 7610, nothing prevents the courts from still inferring its existence based on the nature of the accused's acts. If the alleged acts are deemed to debase, degrade, or demean the intrinsic worth and dignity of a child, all the more will it be child abuse. This is especially true for acts that are intrinsically cruel and excessive, as in *Lucido v. People*:[85]

> Strangulating, severely pinching, and beating an eight (8)-year-old child to cause her to limp are intrinsically cruel and excessive. These acts of abuse impair the child's dignity and worth as a human being and infringe upon her right to grow up in a safe, wholesome, and harmonious place. It is not difficult to perceive that this experience of repeated physical abuse from petitioner would prejudice the child's social, moral, and emotional development.[86]

In *Torres v. People*,[87] we inferred the specific intent of debasing, degrading, and demeaning the intrinsic worth and dignity of a child from the acts of physical abuse employed against a child:

> Although it is true that not every instance of laying of hands on the child constitutes child abuse, petitioner's intention to debase, degrade, and demean the intrinsic worth and dignity of a child can be inferred from the manner in which he committed the act complained of.
>
> To note, petitioner used a wet t-shirt to whip the child not just once but three (3) times. Common sense and human experience would suggest that hitting a sensitive body part, such as the neck, with a

---

[85] 815 Phil. 646 (2017) [Per J. Leonen, Second Division].

[86] Id. at 663.

[87] 803 Phil. 480 (2017) [Per J. Leonen, Second Division].

wet t-shirt would cause an extreme amount of pain, especially so if it was done several times. There is also reason to believe that petitioner used excessive force. Otherwise, AAA would not have fallen down the stairs at the third strike. AAA would likewise not have sustained a contusion

Indeed, if the only intention of petitioner were to discipline AAA and stop him from interfering, he could have resorted to other less violent means. Instead of reprimanding AAA or walking away, petitioner chose to hit the latter.[88] (Citations omitted)

To reiterate, the specific intent to debase, degrade, or demean the child's intrinsic worth and dignity is not indispensable for every act in violation of Section 10(a) of Republic Act No. 7610. Here, since the Information against petitioner describes an offense of maltreatment by way of physical abuse, she can be convicted with child abuse—with or without the specific intent being proven.

III

Petitioner asserts that there is reasonable doubt in her conviction. She argues that AAA's testimony was the only direct evidence attributing the crime to her. She faults the prosecution for failing to present corroborating evidence from his classmates.[89]

We deny petitioner's contentions.

It is settled that the trial courts' factual findings and conclusions are binding on this Court, absent material facts that were overlooked, but could have affected the disposition of the case:

Trial courts at first instance determine the credibility of witnesses. Generally, their findings and conclusions on this matter are given great weight. These findings should not be disturbed on appeal, unless facts that were overlooked or misinterpreted would materially affect the disposition of the case. Thus, in *People v. De Los Santos*:

---

[88] Id. at 490-491.

[89] Id. at 15.

> Basic is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected on the record. Hence, the corollary principle that absent any showing that the trial court overlooked substantial facts and circumstances that would affect the final disposition of the case, appellate courts are bound to give due deference and respect to its evaluation of the credibility of an eyewitness and his testimony as well as its probative value amidst the rest of the other evidence on record.

A perusal of the records shows that there is no clear reason to disturb the factual findings of the Regional Trial Court. AAA's and BBB's testimonies were clear, positive, and direct. The Regional Trial Court judge's assessment of the witnesses' credibility is given great weight and respect, especially on appeal, since he or she had the advantage of actually examining both object and testimonial evidence, including the demeanors of the witnesses.

In *Sanchez v. People, et al.*, this Court upheld the conviction of the accused for child abuse through physical violence based on the witnesses' testimonies. The Decision read:

> Appellant could only proffer the defense of denial. Notably, the RTC found VVV and MMM to be credible witnesses, whose testimonies deserve full credence. It bears stressing that full weight and respect are usually accorded by the appellate court to the findings of the trial court on the credibility of witnesses, since the trial judge had the opportunity to observe the demeanor of the witnesses. Equally noteworthy is the fact that the CA did not disturb the RTC's appreciation of the witnesses' credibility. Thus, we apply the cardinal rule that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on such findings, are accorded respect, if not conclusive effect, especially when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. We have reviewed the records of the RTC and the CA and we find no reason to deviate from the findings of both courts and their uniform conclusion that appellant

is indeed guilty beyond reasonable doubt of the offense of Other Acts of Child Abuse.[90] (Citations omitted)

Here, petitioner failed to show facts that were overlooked by the lower courts. AAA categorically testified that it was petitioner who hit, slapped, and pinched him in her attempt to discipline him for his alleged misbehavior:

Q. Sabi mo nung February 2014 nagsumbong ka sa nanay mo dahil sa ginawa sa iyo ng teacher mo sa Pilipino na si teacher Repollo [Maria] so, ano ba ang nangyari nuon natatandaan mo pa ba nung February 2014?
A. Ano po kinurot po nya ako sa likod tapos hinampas.

Q. Saan parte ng likod mo?
A. Sa ganito po.

Q. Tapos saan ka hinampas?
A. Dito (likod) nya po ako hinampas tapos sa tagiliran nya ako kinurot.

Q. Alam mo ba kung bakit [k]a nya hinampas at kinurot?
A. Opo.

Q. Bakit daw?
A. Dahil akala nya po nagdadaldalan po kami kasi nagtanong po sa akin si Jerico kung anong page na daw po ako sa sinusulat namin.

Q. Tapos ano ang nangyari?
A. Ayun po hinampas nya po ako sa likod tapos kinurot.

Q. Ano yun agad-agad hindi man lang kayo sinaway?
A. Hindi po.

Q. Pano yun nangyari nakatalikod ka ba sa teacher mo o nakaharap ka sa teacher mo?
A. Nakaharap po lumapit po sa harapan namin.

Q. Lumapit sa harap mo at dun ka din hinampas sa likod?
A. Opo.

---

[90] *Fernandez v. People*, G.R. No. 217542, November 21, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/1/64751> [Per J. Leonen, Third Division].

Q. Ano ang pinanghampas nya sa iyo?
A. Kamay nya po.

Q. Eh dun sa kaklase mong nagtatanong sa iyo may ginawa ba si mam Repollo?
A. Hindi ko na po matandaan.

Q. So, nung hampasin ka at kurutin ano ang naging reaksyon mo?
A. Napaluha po ako sa sakit ng kurot.

x x x

Q. Ano yun pagkahampas sa iyo at pagkakurot tapos sabi mo napaluha ka sa sakit umalis kana doon sa classroom?
A. Hindi pa po pinalipat pa po niya ako sa harapan.

Q. Kahit umiiyak kana pinalipat ka sa harapan?
A. Opo.

Q. Ganito - sabi mo napaluha ka sa sakit so, nung lumuluha ka na ba sa sakit nung sabihan ka ni mam Repollo na lumipat ka ng upuan?
A. Hindi na po ako lumuluha noon.

Q. So, lumipat ka naman ng upuan?
A. Opo.

Q. Tapos ano ang sumunod na pangyayari kung natatandaan mo?
A. Si Kenneth po nagpe-pentap po katabi ko po.

Q. Tapos ano ang nangyari nung nagpep-pentap si Kenneth?
A. Pumasok po si mam sa room namin kasi akala ako po yung nagp[e]-pentap.

Q. So, akala na naman ni mam Repollo ikaw na naman ang nagpe-pentap?
A. Opo.

Q. So, nung inakala ni mam Repollo na ikaw na naman ang nagpe-pentap ano ang nangyari?
A. Sinampal nya po si Kenneth pati rin po ako.

Q. Papaanong pagsampal kanan o kaliwa?
A. Kay Kenneth kanan po tapos eto po ang pinangtama nya sa akin yung ganito nya po.

Q. Ano ang ginawa mo ano ang reaksyon mo nung sinampal kayo ni Kenneth?
A. Parang gusto ko na pong umuwi kasi natakot na po ako.

Q. Eh si Kenneth natatandaan mo ba kung ano ang naging reaksyon ni Kenneth?
A. Opo.

Q. Ano ang nangyari kay Kenneth?
Okay lang daw po siya.

Q. Sabay ba kayong umuwi ni Kenneth?
A. Hindi po.

Q. Nauna ka sa kanya?
A. Ang kasabay ko po si Michael.

Q. Pagkasampal ba sa iyo umuwi kana o tinapos mo pa yung klase ni mam Repollo?
A. Hindi ko na po tinapos.

Q. Bakit ganun yung ginawa mo yung (sic) reaksyon?
A. Kasi natakot na po ako eh.

Q. Ano ang kinatakot mo?
A. Baka saktan nya po ako ulet tapos ipahiya.[91]

AAA's testimony was corroborated by a medical certificate showing that he sustained an oval bruise on his left trunk:

Findings noted on left trunk are consistent with [o]val bruise;

Medical Evaluation is consistent with physical injuries that are inflicted by non-accidental means.[92]

While the doctor who examined AAA was not presented, petitioner did not object when the medical certificate was offered in evidence, and thus it was admitted.[93]

Both lower courts gave credence to AAA's testimony. As the Court of Appeals said:

---

[91] *Rollo*. pp. 40-43.

[92] Id. at 114.

[93] Id. at 142.

Notably, the RTC found AAA to be a credible witness. We accord great respect to the said finding of the trial court considering that it was in a better position to decide the question, having heard the witness himself and observed his deportment and manner of testifying during the trial. Besides, nothing in the records indicates that the court a quo ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. Thus, We find no reason to deviate from the conclusion of the RTC that Maria indeed inflicted physical injuries on AAA which constitute child abuse under Section 10 (a) of R.A. No. 7610.

Contrary to accused-appellant's stance, there was no inconsistency in AAA's testimony regarding the time the complained incident happened. While he indeed testified during the direct examination that the incident occurred at about 12:00 in the afternoon, he clarified during cross- examination that the same actually occurred around 12:30 to 12:40 in the afternoon. It is worthy to note that the Class Program for Grade 5 for school year 2013-2014, which accused-appellant herself offered as evidence, shows that the lunch break of the students during the time material to the controversy was from 12:00 to 12:30 only. At any rate, the alleged inconsistency pertains to trivial matter which do not affect the credibility of a witness.[94] (Citations omitted)

The Court of Appeals correctly found that petitioner failed to attribute improper motive to AAA for falsely testifying against her.[95] In *People v. Doca*:[96]

Contrary to appellant's contention, the detailed testimony of the prosecution witness appears clear and convincing thus, giving the Court the impression that she was sincere and credible. Besides, the appellant failed to adduce any evidence to establish any improper motive that may have impelled the same witness to falsely testify against him. *The absence of evidence of improper motive on the part of the said witness for the prosecution strongly tends to sustain the*

---

[94] Id. at 43-44.

[95] Id. at 44.

[96] 394 Phil. 501 (2000) [Per J. De Leon, Second Division]

conclusion that no such improper motive exists and that her testimony is worthy of foll faith and credit.[97] (Emphasis supplied, citation omitted)

There being no evidence that AAA had ill motives to falsely testify against his teacher, his testimony deserves full faith and credit.

Petitioner does not deny that AAA had been pinched, but only claims that it was not she who did it. She presents Julie Ann as the person responsible for pinching AAA. Petitioner contends that the Court of Appeals incorrectly disregarded Julie Ann's testimony. Supposedly, it should have considered the testimony because it was positive, clear, and straightforward, with the girl having no improper motive to falsely testify in her teacher's favor.[98]

We rule otherwise. The Court of Appeals was correct in refusing to give credence to Julie Ann's testimony.

A biased testimony is given by a witness whose relation "to the cause or to the parties is such that [they have] an incentive to exaggerate or give false color to [their] statements, or to suppress or to pervert the truth, or to state what is false."[99]

Here, the trial court observed that during preliminary investigation, petitioner asked her students to write their separate accounts of what happened, without the assistance of their parents:

> On cross-examination, she confirmed that she asked her students to write what in her view really happened ("*pinasulat ko sila para depensahan ako*"). She safekept the documents ("*tinago ko lang*") and produced them in the course of the preliminary investigation ("*ginamit ko noong nag-counter [affidavit] na*"). The students were not assisted by their respective parents. Certainly, their permission was never sought by the accused.

---

[97] Id. at 512.

[98] *Rollo*, pp. 15-16.

[99] *People v. Ulgasan*, 390 Phil. 763, 778 (2000) [Per J. Puno, First Division] citing *People vs. Dones*, 325 Phil. 173 (1996) [Per J. Kapunan, First Division].

One of these students was Julie Arm Bacayo, who testified for the accused. [Julie Ann] testified that she - and not the accused - pinched the complaining minor.[100]

The Court of Appeals upheld these findings:

The fact that Julie Arm admitted that she pinched AAA in his left trunk does not also negate Maria's liability for child abuse. Besides, it cannot be denied that Maria instructed her students to write down in her favor. As aptly argued by the OSG, at that time, Maria had moral ascendancy over her students who would definitely follow her instructions for fear of reprisal. This circumstance alone tainted the credibility of Julie Arm. It has been held time and again that corroborative testimony is not credible if tainted with bias.[101]

Assuming that Julie Ann's testimony was true, it would still not exonerate petitioner. Such testimony does not include the other acts of child abuse alleged in the Information. AAA established that aside from pinching, petitioner also hit and slapped him in the face.

Even if it were not biased, Julie Ann's testimony still deserves scant consideration for its inconsistencies on material points.

First, Julie Ann has repeatedly changed her account as to the time the incident occurred:

Q: Nung nangyari itong insidenteng ito may klase kayo dapat?
A: Opo.

Q: Ano yung subject niyo dapat?
A: MCEP po.

Q: Musika?
A: Opo.

Q: Anong oras ito mga 1:30?
A: Opo.

Q: Ipapakita ko sa iyo ito anank noh, nakalagay dito eto ang inyong subject class program, tama noh?
A: Opo.

---

[100] *Rollo*, p. 55.

[101] Id. at 44.

Q: Tapos ang sabi mo 1:30 ang klase mo nung nangyari yung insidente 1:30 yon?
A: Opo.

Q: Pakibasa nga anak dito ang 1:10 to 1:30 anong subject yan?
A: EPP po.

Q: Ano yung EPP?
A: Edukasyon sa pagpapakatao.

Q: Hindi yon music?
....

A: Pang edukasyon na pangkabuhayan po.

Q: So, iyon yung subject nung 1:30 hindi music, tama?
A: Opo.

....

Q: So mali ka don. Bb. Testigo, sabi mo 1:30 nagpipintura sina Ms. Repollo, correct?
A: Opo.

Q: At sinabi mona pumasok siya at sinabi o hwag kayong maingay gawin nyo ang assignment nyo, tama?

A: Opo.

....

Q: Gaano ba katagal magpintura doon sa labas?
A: Medyo matagal din po kasi po props po yun ng caracol.

Q: Mga gaano yun katagal inaabot ng ilang oras?
A: Mga isa po o dalawa.

Q: Anong oras nag-umpisa si Ms. Repollo magpintura?
A: Magtu-twelve po.

Q: So dapat mga 1:00 o'clock tapos na ganun ba yon?
A: Opo.

Q: Pero 1:30 na hindi pa tapos magpintura, tama?
A: Opo.

Q: So anong oras sila natapos magpintura?
A: Mga 1:00 po.

Q: Sinabi mo mga 1:00 o'clock sila natapos magpintura pero ngayon sinasabi mo 1:30 hindi pa tapos magpintura sina mam Repollo, ano ba talaga, tapos na ba o hindi pa nung 1:30?
A: Nung 1:30 po tapos na.

Q: Pero nasa labas lang siya ng classroom?
A: Opo.

Q: Nagpipintura pa rin sila noon?
A: Hindi na po tapos na po.

Q: So, nung 1:30 hindi na sila nagpipintura?
A: Opo.

Q: Nasa labas lang sila ng classroom?
A: Opo.

Q: Sure ka doon?
A: Opo.

....

Q: Anong oras bumalik si Ms. Repollo sa classroom?
A: Mga magtu-twelve thir[t]y po.

Q: Pagkatapos magpintura?
A: Opo.

Q: Sabi mo natapos 1:00 o'clock natapos ang pagpipintura sabi mo ngayon 12:30 bumalik si Ms. Repollo pagkatapos magpintura, ano bang oras talaga natapos ang pagpipintura ngayon 12:30 na?
A: Mga 12:30 po talaga.

Q: Tapos na ang pagpipintura?
A: Opo kasi po bumalik na po siya magtu-twelve thirty na po.

Q: 12:30 nasa loob na siya ng classroom?
A: Opo.

Q: Hindi na siya lumabas, tama?
A: Hindi na po kasi po lunchbreak na po namin yon eh.

Q: Teka 12:30 nasa loob siya ng classroom tapos mo kanina tinawag siya ni Jerico, anong oras siya tinawag ni Jerico?
A: Mga 12:00 po.

Q: So, hindi na 1:30?
A: Hindi po.[102]

On re-direct examination, Julie Ann contradicted her earlier statement that at 12:30 p.m., petitioner was done painting and no longer left the room:

Q: Nung bumalik siya sa kwarto para sawayin si [AAA] at si Michael tapos na ba siya magpintura o bumalik pa siya para magpintura o hindi mo alam?
A: Nung sinaway po sina [AAA] bumalik pa po.

Q: Bumalik palabas magpipintura ulet o iba naman ang ginawa?
A: Nagpintura po ulet siya.

Q: Eh bakit sinabi kanina kay Fiscal tapos na siya magpintura ng alas-dose y medya samantalang ngayon sinabi mo naman na nuong bumalik siya [sa] classroom para sawayin yung dalawa maingay lumabas ulet siya para magpintura ulet, alin ba dito ang natatandaan mo talaga.
A: Yung bumalik pa po siya.

Q: Sa?
A: Sa pagpipintura po.[103]

Second, Julie Ann testified that after lunch, when petitioner started to teach, she was seated next to AAA.[104] She said she sat in front, next to AAA, until the end of their classes at 4:50 p.m.[105] However, this contradicts with petitioner's version that when she returned to the classroom, AAA was no longer in the room and only his bag was left on his seat.[106]

Finally, Julie Ann testified that during their lunch break, none of them were doing the assignment because they were just eating:

---

[102] Id. at 154-164.

[103] Id. at 170-171.

[104] Id. at 175.

[105] Id. at 172.

[106] Id. at 8.

Q: Ibalik ko ngayon duon sa naalala mo nuong araw na yon magmula nuong bago lumabas si/kasi pinakita ni Fisal lunchbreak itong 12:00 to 12:30 pero walang lumalabas sa kwarto eh nandyan kayo lahat kumakain?
A: Opo.

Q: May gumagawa rin ba ng assignment kahit walang utos?
A: Wala po.

Q: Upo lang kain lang?
A: Opo.[107]

However, petitioner narrates that at around noon that day, she gave a seatwork to her students while she was helping other teachers paint the materials for their *karakol* program.[108]

For these material inconsistencies, the lower courts correctly disregarded Julie Ann's testimony. Even if such testimony was given by a top student, it remains unreliable, inconsistent, and undeserving of evidentiary weight.

As a last resort, petitioner faults the prosecution for not presenting a psychological report, and thus failing to prove that the alleged acts prejudiced AAA's normal development. Again, petitioner is mistaken.

Since petitioner was charged with physical maltreatment, her acts need not be proven to have prejudiced AAA's development. The Court of Appeals correctly relied on *Sanchez v. People*[109] in ruling that the commission of acts prejudicial to a child's development is not a necessary element, but a separate mode of commission under Section 10 of Republic Act No. 7610.

Nevertheless, the testimony of AAA's mother, BBB, shows how the incident negatively affected her son. She testified that

---

[107] Id. at 169.

[108] Id. at 7.

[109] 606 Phil. 762 (2009) [Per J. Nachura, Third Division], citing *Araneta v. People*, 578 Phil. 876 (2008) [Per J. Chico-Nazario, Third Division].

AAA evaded petitioner at school and was transferred to another section in the middle of the school year:

Q: ... Itong pagkatapos nitong mga pangyayari, ano [naman] ng naging epekto kay [AAA] kung mayroon man?
A: Natatakot po [siya] sa mga kasalubong niya kapag pumapasok siya nang iskul.

Q: Pero nanatili po siyang pumapasok doon sa iskul?
A: Opo.

Q: So kapag sinasabi mong natatakot, anong ibig mong sabihin?
A: Iniiwasan niya na pong makasalubong.

Q: Iniiwasan. Iyong bang takot niya ma[-]idedescribe mo kung papaanong takot ang mayroon siya?
A: Iyong lagi siyang kinakabahan.

Q: Kinakabahan?
A: Opo.

Q: Pero teacher pa po ba niya si...?
A: Hindi na po.

Q: Hindi na?
A: Nagpapalit na po...

Q: Saan po ba niya teacher si teacher Repollo?
A: Adviser niya po iyon eh.

Q: So adviser niya po si teacher Repollo?
A: Opo.

Q: So grade 5 ito ay February so ibig sabihin may klase pa?
A: Opo.

Q: Nagpatuloy ba siya doon sa klase niya kay teacher Repollo?
A: Hindi na po inilipat na po siya [ng] ibang teacher

Q: Sino po ang naglipat?
A: Iyon po ang napagkasunduan namin sa principal.

Q: Iyon ang n[a]pagkasunduan ninyo?
A: Opo.

Q: So inilipat na sya [ng] adviser?
A: Opo.

Q: Pagkatapos [ng] February, nagbakassyon (sic), so pumasok ba uli doon sa eskwelahan na iyon si [AAA]?
A: Opo.

Q: So ano naman ang kanyang pakiramdam sa pagpasok niya sa iskul?
A: Iyon po ganon pa rin po. Tuwing makakasalubo[ng] niya si Mrs. Repollo natatakot po siya.[110]

All told, this Court upholds petitioner's conviction for child abuse under Section 10(a) of Republic Act No. 7610. The Court of Appeals correctly modified the penalty and imposed the indeterminate sentence of four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum, and six (6) years, six (6) months, and one (1) day of *prision mayor*, as maximum.[111]

The trial court correctly awarded[112] ₱20,000.00 as moral damages, ₱20,000.00 as exemplary damages, and ₱10,000.00 as temperate damages, in line with *Rosaldes v. People*.[113] We modify the award of damages to include the rate of 6% per annum from the finality of this Decision until fully paid.[114]

WHEREFORE, the Court of Appeals October 24, 2018 Decision and March 18, 2019 Resolution in CA-G.R. CR No. 40442 are **AFFIRMED with MODIFICATION**.

Petitioner Maria Consuela Malcampo-Repollo is **GUILTY** beyond reasonable doubt of child abuse under Section 10(a) of Republic Act No. 7610. She is sentenced to a minimum imprisonment of four (4) years, nine (9) months, and eleven

---

[110] Id. at 194-196.

[111] *Sanchez v. People*, 606 Phil. 762 (2009) [Per J. Nachura, Third Division] citing *Araneta v. People*, 578 Phil. 876 (2008) [Per J. Chico-Nazario, Third Division].

[112] *Rollo*, p. 56.

[113] 745 Phil. 77 (2014) [Per J. Bersamin, First Division].

[114] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

(11) days of *prision correccional*, to a maximum of six (6) years, six (6) months, and one (1) day of *prision mayor*. In addition, she is **ORDERED** to pay AAA moral and exemplary damages worth ₱20,000.00 each, and temperate damages worth ₱10,000.00.

All damages awarded shall be subject to interest at the rate of 6% per annum from the finality of this Decision until fully paid.

SO ORDERED.

Hernando, Inting, and *Rosario, JJ.*, concur.

Delos Santos, J., on wellness leave.

THIRD DIVISION

[G.R. No. 249134. November 25, 2020]

PHILIPPINE RABBIT BUS LINES, INC., *Petitioner, v.* **EDWIN A. BUMAGAT,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES ARE GENERALLY ACCORDED NOT ONLY RESPECT, BUT AT TIMES EVEN FINALITY EXCEPT WHEN THEY CONFLICT OR CONTRADICT WITH THOSE OF THE COURT OF APPEALS.— Settled is the rule that "factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times even finality, because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdictions." The Court, after all, is not a trier of facts and does not ordinarily embark on the evaluation of evidence adduced during trial. However, this rule is *not* absolute. One such exception to this rule covers instances when the findings of fact of the quasi-judicial agency concerned conflict or contradict those of the CA. "When there is variance in the factual findings, it is incumbent upon this Court to reexamine the facts once again."

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; QUANTUM OF EVIDENCE; THE EMPLOYER BEARS THE BURDEN TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THE TERMINATION OF EMPLOYMENT IS FOR A JUST CAUSE.— "The cardinal rule in termination cases is that the employer bears the burden of proof to show that the dismissal is for just cause, failing in which it would mean that the dismissal is not justified." This rule applies adversely against petitioner since it has failed to discharge that burden by the requisite quantum of evidence.

"The Labor Code mandates that before an employer may legally dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes." . . .

. . . [A]n employer[] is burdened to prove just cause for terminating the employment of respondent with clear and convincing evidence. Given petitioner's failure to discharge this burden, the Court finds that respondent was indeed dismissed without just cause by petitioner.

3. ID.; ID.; ID.; JUST CAUSES FOR DISMISSAL; ABSENCE FROM WORK; PROLONGED ABSENCE FROM WORK DUE TO SERIOUS PHYSICAL INJURIES ARISING FROM A VEHICULAR ACCIDENT IS NOT A JUST CAUSE FOR TERMINATION OF EMPLOYMENT.— A perusal of the records shows that respondent had been terminated from work by petitioner due primarily to the serious physical injuries he sustained during the vehicular accident on July 31, 1997 which, in turn, resulted in his prolonged absence from work. This is clearly evinced by petitioner's deliberate failure to act on respondent's request to return to work through his letter dated March 17, 2000. However, it bears stressing that these circumstances do not fall under the above-mentioned just causes for termination under the Labor Code.

4. ID.; ID.; ID.; PROCEDURAL DUE PROCESS; PROCEDURAL DUE PROCESS REQUIRES THAT A WRITTEN NOTICE REGARDING THE TERMINATION OF EMPLOYMENT BE SENT TO THE EMPLOYEE CONCERNED.— The Court further rules that petitioner had failed to comply with the requirements of *procedural due process* when it terminated respondent's employment.

. . .

There is nothing in the records which shows that petitioner had sent a written notice to respondent informing him of the ground or grounds of his termination, or the reason why he was deemed resigned, or at the very least, why he could not be offered with a new work assignment or be accepted back to resume his former work as bus driver. By the lack of notice,

naturally, respondent had no opportunity to explain his side. Neither did petitioner send a written notice to respondent informing him that he could no longer stay employed with the company after considering all the circumstances.

5. ID.; ID.; ID.; IN CASE OF SERIOUS DOUBT AS TO THE PHYSICAL CAPABILITY OF AN UNJUSTLY DISMISSED EMPLOYEE TO RETURN TO WORK, SEPARATION PAY SHOULD BE AWARDED IN LIEU OF REINSTATEMENT. — Under Article 294 [279] of the Labor Code, an unjustly dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

However, the Court holds that separation pay should be awarded to respondent in lieu of reinstatement. There is serious doubt as to whether respondent is physically capable of driving a bus on account of the serious physical injuries he sustained during the vehicular accident on July 31, 1997.

APPEARANCES OF COUNSEL

Ramon D. Facun for petitioner.

R E S O L U T I O N

INTING, *J.*:

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated December 28, 2018 and the Resolution[3] dated August 14, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 133319 finding Edwin A. Bumagat (respondent) to have been

---

[1] *Rollo*, pp. 9-29.

[2] *Id*. at pp. 156-166; penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Eduardo B. Peralta, Jr. and Jhosep Y. Lopez, concurring.

[3] *Id*. at pp. 183-185.

illegally dismissed by Philippine Rabbit Bus Lines, Inc. (petitioner).

The Antecedents

Petitioner hired respondent in March 1991 as a bus driver for the routes Manila-Laoag and Baguio-Manila. On July 31, 1997, the bus that was being driven by respondent was bumped by a speeding truck along the National Highway in Pozorrubio, Pangasinan. As a result, respondent sustained serious physical injuries for which he underwent several surgeries within a span of more than two years and ended up consuming all of his six months of accumulated sick leave credits.[4]

On March 17, 2000, respondent wrote Natividad Nisce, the then President of petitioner, requesting to be accepted back to work as a bus driver.[5] The letter, however, was not acted upon. Thus, on June 9, 2000, respondent filed a Request for Assistance before the Department of Labor and Employment (DOLE) against petitioner for reinstatement and/or payment of separation pay. Later on, respondent withdrew his request because petitioner promised him a job at the Laoag City Terminal.[6]

Unfortunately, petitioner failed to fulfill its promise to reinstate respondent at the Laoag City Terminal. This prompted respondent to file another Request for Assistance with the DOLE. When no amicable settlement was reached, respondent filed a Complaint[7] for illegal dismissal and money claims against petitioner. The Labor Arbiter (LA) initially dismissed the complaint on the ground of prescription.[8] On appeal, the National Labor Relations Commission (NLRC) found that respondent's

---

[4] *Id*. at 157.

[5] See Letter dated March 17, 2000, *id*. at 42.

[6] *Id*. at 157-158.

[7] *Id*. at 30-31.

[8] See Order dated February 12, 2003 as penned by Labor Arbiter Fatima Jambaro-Franco, *id*. at 87-89.

cause of action had not yet prescribed and remanded the case to the LA for further proceedings.[9]

Ruling of the LA

On August 9, 2006, the LA dismissed respondent's complaint for lack of merit.[10] The LA noted that at the time respondent requested petitioner to be accepted back to work, he had already consumed all his leaves as he was out of work for more than two years due to the injuries he sustained during the vehicular accident. Thus, the LA concluded that respondent had not, in any manner, been factually dismissed from his employment by petitioner. Besides, when respondent requested to be admitted back as a bus driver, there was already a medical recommendation from one Dr. Francisco S. Lukban, M.D. (Dr. Lukban) that he be given permanent disability benefits.[11]

Respondent then appealed to the NLRC.

Ruling of the NLRC

In the Resolution[12] dated May 22, 2013, the NLRC affirmed the LA's Decision *in toto*. According to the NLRC, it was not petitioner's fault that it could not accept respondent back to work as the latter had been absent for a long time. The NLRC also pointed out that it was impractical for petitioner to keep respondent's job open for him for almost three years.[13]

Respondent moved for reconsideration of the ruling. The NLRC denied the motion in the Resolution[14] dated September

---

[9] *Id*. at 158.

[10] See Decision dated August 9, 2006 of the National Labor Relations Commission in NLRC-NCR-Case No. 00-06-04573-2002 as penned by Labor Arbiter Cresencio G. Ramos, Jr., *id*. at 90-94.

[11] *Id*. at 93.

[12] *Id*. at 105-109; penned by Commissioner Gregorio O. Bilog III, with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.

[13] *Id*. at 108.

[14] *Id*. at 110-111.

30, 2013. Aggrieved, respondent filed a Petition for *Certiorari*[15] before the CA assailing the NLRC Decision and Resolution.

Ruling of the CA

In the Decision[16] dated December 28, 2018, the CA reversed and set aside the NLRC ruling. It ruled that: *first*, respondent was constructively dismissed from his employment due to petitioner's failure to provide the former a new work assignment when he reported to work and asked to be accepted back as a bus driver;[17] and *second*, respondent did not abandon his work.[18]

The CA thus disposed of the case as follows:

> WHEREFORE, the petition is GRANTED. The assailed Decision dated May 22, 2013 and Resolution dated September 30, 2013 of public respondent National Labor Relations Commission are SET ASIDE.
>
> Private respondent Philippine Rabbit Bus Lines is ORDERED to reinstate petitioner Edwin A. Bumagat and to pay him full backwages, inclusive of allowances, and his other benefits or their monetary equivalent, as well as attorney's fees in the amount of 10% of the total monetary claims. On top of the monetary awards, private respondent Philippine Rabbit Bus Lines is ORDERED to pay petitioner legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.
>
> SO ORDERED.[19]

Petitioner filed a Motion for Reconsideration.[20] The CA denied the motion in the Resolution[21] dated August 14, 2019.

Hence, this petition.

---

[15] *Id*. at 112-124.

[16] *Id*. at 156-166.

[17] *Id*. at 160-161.

[18] *Id*. at 161.

[19] *Id*. at 165.

[20] *Id*. at 167-176.

[21] *Id*. at 183-185.

The Issue

The principal issue for the Court's resolution is whether petitioner had illegally dismissed respondent from his employment.

The Court's Ruling

The petition lacks merit.

Settled is the rule that "factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times even finality, because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdictions."[22] The Court, after all, is not a trier of facts and does not ordinarily embark on the evaluation of evidence adduced during trial.[23] However, this rule is *not* absolute. One such exception to this rule covers instances when the findings of fact of the quasi-judicial agency concerned conflict or contradict those of the CA.[24] "When there is variance in the factual findings, it is incumbent upon this Court to reexamine the facts once again."[25]

After a careful review of the records of the case, the Court resolves to affirm with modifications the findings of the CA. The Court cannot sustain the defense that petitioner could not accept respondent back to work by reason of his medical condition and because he had been found medically unfit to work as a bus driver per Dr. Lukban's Certification.[26]

---

[22] *Maria De Leon Transit [Transportation], Inc. v. Pasion*, G.R. Nos. 183634-35 (Notice), October 8, 2014, citing *General Milling Corp. v. Viajar*, 702 Phil. 532, 540 (2013), further citing *Eureka Personnel & Management Services, Inc. v. Valencia*, 610 Phil. 444, 453 (2009).

[23] *Id*. See also *Bernarte v. Philippine Basketball Association, et al.*, 673 Phil. 384 (2011).

[24] *Id*.

[25] *Id.*, citing *Janssen Pharmaceutica v. Silayro*, 570 Phil. 215, 226-227 (2008).

[26] *Rollo*, p. 80.

"The cardinal rule in termination cases is that the employer bears the burden of proof to show that the dismissal is for just cause, failing in which it would mean that the dismissal is not justified."[27] This rule applies adversely against petitioner since it has failed to discharge that burden by the requisite quantum of evidence.

"The Labor Code mandates that before an employer may legally dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes."[28] The *just causes for the termination of employment* under Article 297 [282] of the Labor Code are the following:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

A perusal of the records shows that respondent had been terminated from work by petitioner due primarily to the serious physical injuries he sustained during the vehicular accident on July 31, 1997 which, in turn, resulted in his prolonged absence from work. This is clearly evinced by petitioner's deliberate

---

[27] *Valdez v. NLRC*, 349 Phil. 760, 768 (1998), citing *Philippine Manpower Services, Inc. v. NLRC*, 296 Phil. 596, 605 (1993); *Mapalo v. National Labor Relations Commission*, 303 Phil. 283, 288 (1994); *Sanyo Travel Corp. v. NLRC*, 345 Phil. 346, 357 (1997).

[28] *Victory Liner, Inc. v. Race*, 548 Phil. 282, 298 (2007).

failure to act on respondent's request to return to work through his letter dated March 17, 2000. However, it bears stressing that these circumstances do not fall under the above-mentioned just causes for termination under the Labor Code. As previously discussed, petitioner, as an employer, is burdened to prove just cause for terminating the employment of respondent with clear and convincing evidence. Given petitioner's failure to discharge this burden, the Court finds that respondent was indeed dismissed without just cause by petitioner.

The Court further rules that petitioner had failed to comply with the requirements of *procedural due process* when it terminated respondent's employment.

In *Victory Liner, Inc. v. Race (Victory Liner, Inc.)*,[29] the Court explained the procedural aspect of a lawful dismissal as follows:

> In the termination of employment, the employer must (a) give the employee a written notice specifying the ground or grounds of termination, giving to said employee reasonable opportunity within which to explain his side; (b) conduct a hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given the opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) give the employee a written notice of termination indicating that upon due consideration of all circumstances, grounds have been established to justify his termination.[30]

Petitioner did not comply with the foregoing requirements. There is nothing in the records which shows that petitioner had sent a written notice to respondent informing him of the ground or grounds of his termination, or the reason why he was deemed resigned, or at the very least, why he could not be offered with a new work assignment or be accepted back to resume his former work as bus driver. By the lack of notice, naturally, respondent had no opportunity to explain his side.

---

[29] *Id*.

[30] *Id*. at 299. Citation omitted.

Neither did petitioner send a written notice to respondent informing him that he could no longer stay employed with the company after considering all the circumstances. All petitioner could claim is that it did not dismiss respondent from work, but that the latter's condition rendered him incapable of working. Obviously, and as just discussed, this defense is without basis.

In view of the fact that petitioner neglected to observe the requirements of substantial and procedural due process in terminating respondent's employment, the Court rules that the latter was illegally dismissed from work by petitioner.

Under Article 294 [279] of the Labor Code, an unjustly dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

However, the Court holds that separation pay should be awarded to respondent in lieu of reinstatement. There is serious doubt as to whether respondent is physically capable of driving a bus on account of the serious physical injuries he sustained during the vehicular accident on July 31, 1997. Even in his Position Paper, respondent was seeking reinstatement, *or* payment of separation pay if reinstatement is no longer viable.[31]

On this point, the Court's ruling in *Victory Liner, Inc.* is instructive:

> It should be stressed that petitioner is a common carrier and, as such, is obliged to exercise extra-ordinary diligence in transporting its passengers safely. To allow the respondent to drive the petitioner's bus under such uncertain condition would, undoubtedly, expose to danger the lives of the passengers and the property of the petitioner. This would place the petitioner in jeopardy of violating its extra-ordinary diligence obligation and, thus, may be subjected to numerous complaints and court suits. It is clear therefore that the reinstatement of respondent not only would be deleterious to the riding public but

[31] *Rollo*, p. 40.

would also put unreasonable burden on the business and interest of the petitioner. In this regard, it should be remembered that an employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests.

Based on the foregoing facts and circumstances, the reinstatement of the respondent is no longer feasible. Thus, in lieu of reinstatement, payment to respondent of separation pay equivalent to one month pay for every year of service is in order.[32]

WHEREFORE, the petition is **DENIED**. The Decision dated December 28, 2018 and the Resolution dated August 14, 2019 of the Court of Appeals in CA-G.R. SP No. 133319 are **AFFIRMED** with **MODIFICATION**. Petitioner Philippine Rabbit Bus Lines, Inc. is declared guilty of illegal dismissal and is ordered to pay respondent Edwin A. Bumagat separation pay equivalent to one-month pay for every year of service, in lieu of his reinstatement, plus his full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time of his dismissal up to the finality of this Resolution.

The case is hereby **REMANDED** to the Labor Arbiter for the proper computation of the monetary awards. The total monetary award shall earn legal interest at 6% *per annum*, computed from the finality of this Resolution until full satisfaction thereof.

SO ORDERED.

Leonen (*Chairperson*), *Hernando*, and *Rosario, JJ.*, concur.

Delos Santos, J., on official leave.

---

[32] *Victory Liner, Inc. v. Race*, *supra* note 28 at 301. Citations omitted.

THIRD DIVISION

[G.R. No. 251537. November 25, 2020]
(Formerly UDK-16573)

SPOUSES TEOFANES and FELICIANA ANSOK and SPOUSES CLARITO and JISELY[*] AMAHIT, *Petitioners, v.* **DIONESIA TINGAS,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; JURISDICTION IS DETERMINED FROM THE MATERIAL AVERMENTS IN THE COMPLAINT, THE LAW IN FORCE AT THE TIME THE COMPLAINT IS FILED, AND THE CHARACTER OF THE RELIEF SOUGHT.— It is worthy to emphasize that jurisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought. It is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or in a motion to dismiss otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.

2. ID.; ID.; JURISDICTION OF FIRST LEVEL COURTS; BATAS PAMBANSA BLG. 129, AS AMENDED; JURISDICTION OVER POSSESSORY ACTIONS.— [T]he MCTC has jurisdiction over respondent's Complaint for Recovery of Possession and Damages. . . .

Section 33 of Batas Pambansa Blg. 129, as amended by Section 3 of Republic Act No. (RA) 7691, vests the Metropolitan Trial Courts, Municipal Trial Courts, and the MCTCs with exclusive and original jurisdiction over possessory actions, *i.e., accion*

---

[*] Referred to as Jeseli in some parts of the *rollo*.

publiciana and *accion reivindicatoria*, where the assessed value of the subject property does not exceed ₱20,000.00, or, if the realty involved is located in Metro Manila, such value does not exceed ₱50,000.00.

3. ID.; ID.; COMPREHENSIVE AGRARIAN REFORM LAW (RA NO. 6657); JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR); AGRARIAN REFORM DISPUTES; THE DAR HAS JURISDICTION OVER AGRARIAN REFORM DISPUTES AND ALL MATTERS INVOLVING THE IMPLEMENTATION OF AGRARIAN REFORM PROGRAMS.— Section 50 of RA 6657, or the Comprehensive Agrarian Reform Law of 1998, grants the DAR with the primary jurisdiction to determine and adjudicate agrarian reform disputes and exclusive jurisdiction over all matters involving the implementation of the agrarian reform programs. Section 3(d) of RA 6657 defines an agrarian dispute as *any controversy relating to tenural agreements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.*

4. ID.; ID.; ID.; ABSENT TENANCY RELATIONSHIP BETWEEN THE RESPONDENT AND THE PETITIONER, A COMPLAINT FOR RECOVERY OF POSSESSION OF PROPERTY CANNOT BE CATEGORIZED AS AN AGRARIAN DISPUTE.— A judicious perusal of respondent's complaint reveals that all she prayed for was to recover possession of the subject property from petitioners. The Court finds no juridical tie of landownership, or tenancy that exists between respondent and petitioners which would have categorized the complaint as an agrarian dispute. The fact that respondents' OCT emanated from the CLOA will not make the controversy an agrarian dispute and divest the regular courts of jurisdiction over it.

5. ID.; JUDGMENTS; *RES JUDICATA*; A FINAL JUDGMENT OR DECREE ON THE MERITS BY A COURT OF COMPETENT JURISDICTION IS CONCLUSIVE OF THE RIGHTS OF THE PARTIES OR THEIR PRIVIES IN ALL LATER SUITS ON POINTS AND MATTERS

DETERMINED IN THE FORMER SUIT.— *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

6. ID.; ID.; ID.; TWO CONCEPTS OF *RES JUDICATA*; BAR BY PRIOR JUDGMENT; CONCLUSIVENESS OF JUDGMENT; REQUISITES THEREOF.— [T]here are two distinct concepts of *res judicata*; namely: (a) bar by prior judgment; and (b) conclusiveness of judgment.

. . .

For *res judicata* under the first concept (bar by prior judgment) to apply, the following requisites must concur: (a) a former final judgment that was rendered on the merits; (b) the court in the former judgment had jurisdiction over the subject matter and the parties; and (c) identity of parties, subject matter and cause of action between the first and second actions. In contrast, the elements of conclusiveness of judgment are identity of: (a) parties; and (b) subject matter in the first and second cases.

7. ID.; ID.; ID.; FOR *RES JUDICATA* TO APPLY, THERE MUST BE JUDGMENT ON THE MERITS.— One of the requisites of *res judicata* calls for a judgment on the merits or that which is rendered after arguments and investigation and when there is determination which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial. Thus, a judgment on the merits is one wherein there is an unequivocal determination of the rights and obligations of the parties with respect to the causes of action and the subject matter of the case.

8. ID.; ID.; ID.; ID.; A DISMISSAL ON THE GROUND OF LACK OF JURISDICTION OR BASED ON MERE

TECHNICALITY IS NOT A RULING ON THE MERITS.— The decision in the unlawful detainer case is not a judgment on the merits. It is worthy to recall that Civil Case No. CC-284 (unlawful detainer), which was subsequently appealed to the RTC as Civil Case No. 13819, was dismissed based on the ground of lack of jurisdiction, or clearly based on mere technicality. According to the RTC, respondent's complaint for unlawful detainer failed to aver essential facts for unlawful detainer. There was no unequivocal determination of the rights and obligations of the parties with respect to the cause of action for unlawful detainer. As such, the final disposition of the complaint for unlawful detainer, which is a dismissal for lack of jurisdiction, is not a ruling on the merits.

9. ID.; ID.; ID.; *RES JUDICATA* WILL NOT APPLY WHEN THERE IS NO IDENTITY OF CAUSES OF ACTIONS BETWEEN THE PREVIOUS ACTION FOR UNLAWFUL DETAINER AND THE PRESENT ACTION FOR RECOVERY OF PROPERTY.— A judicious perusal of the records reveals that there is no identity of causes of actions between Civil Case No. CC-284 (*accion interdictal* or unlawful detainer) and Civil Case No. 2010-338 (*accion reivindicatoria* or recovery of property).

A judgment in a forcible entry or unlawful detainer case disposes of no other issue except possession and establishes only who between the claimants has the right of possession. . . .

A careful scrutiny of respondent's Complaint for Recovery of Property reveals that it is an *accion reivindicatoria* or an action to recover possession by virtue of ownership. . . .

Without doubt, *res judicata* cannot be invoked between the previous unlawful detainer case and the instant case for recovery of property.

10. ID.; CIVIL LAW; PROPERTY; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); DIRECT ATTACK AND COLLATERAL ATTACK ON TORRENS TITLE, DISTINGUISHED; A COLLATERAL ATTACK ON TITLE IS NOT PERMITTED.— [P]etitioners' challenge against respondent's title is clearly a collateral attack on the latter which is proscribed by law.

> Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, prohibits a collateral attack to a certificate of title, . . .
>
> The Court, through the pen of Associate Justice Florenz D. Regalado, judiciously discussed in *Co, et al. v. Court of Appeals, et al.*, the distinctions between a direct attack and collateral attack on Torrens Title, thus:
>
> Anent the issue on whether the counterclaim attacking the validity of the Torrens title on the ground of fraud is a collateral attack, we distinguish between the two remedies against a judgment or final order. *A direct attack against a judgment is made through an action or proceeding the main object of which is to annul, set aside, or enjoin the enforcement of such judgment, if not yet carried into effect; or, if the property has been disposed of, the aggrieved party may sue for recovery. A collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action.* . . .
>
> Unmistakably, petitioners' claim that the OCT No. OCT-12607 was improvidently issued by DAR to respondent constitutes an impermissible collateral attack on respondent's title. Petitioners' attack on the proceeding granting respondent's title was made as an incident in the main action for recovery of property. The MCTC, RTC, as well as the CA, correctly struck down petitioners' attack against respondent's certificate of title.

APPEARANCES OF COUNSEL

Erames Law Office for petitioners.
Hansel T. Anito for respondent.

R E S O L U T I O N

INTING, *J.*:

Before the Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside

[1] *Rollo,* pp. 6-15.

the Decision[2] dated March 15, 2018 and the Resolution[3] dated September 20, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 07886. The assailed Decision and Resolution affirmed the Decision dated July 24, 2013 of Branch 38, Regional Trial Court (RTC), Dumaguete City in Civil Case No. AP-05-13-1217 that affirmed the Decision dated February 14, 2013 of the 5th Municipal Circuit Trial Court (MCTC), Zamboanguita-Dauin, Negros Oriental in Civil Case No. 2010-338.

The Antecedents

The case stemmed from a complaint for recovery of property and actual damages filed by Dionesia Tingas (respondent) against Spouses Teofanes (Teofanes) and Feliciana Ansok, and Spouses Clarito and Jisely Amahit (petitioners).[4]

The subject property is Lot No. 859 situated in Brgy. Mayabon, Zamboanguita, Negros Oriental covered by Original Certificate of Title (OCT) No. OCT-12607 registered under the name of respondent.[5]

Early on, both respondent and petitioners had conflicting claims of ownership over the subject property. Petitioners asserted that the subject property was inherited by Teofanes from his mother Cristina Ansok and his grandfather Gaudencio Elma; and that they have been in continuous possession of the property for 75 years. On the other hand, respondent maintained that she is one of the heirs of Cipriana Elma, the owner of the subject property.[6]

---

[2] *Id.* at 22-35; penned by Associate Justice Gabriel T. Robeniol with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring.

[3] *Id.* at 19-20; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maximo, concurring.

[4] *Id.* at 22-23.

[5] *Id.* at 23.

[6] *Id.*

According to the respondent, petitioners occupied the property by mere tolerance of the heirs of Cipriana Elma. Respondent allowed petitioners to occupy the subject property on the condition that they will vacate it upon demand. In September 2004, respondent and her predecessors-in-interest demanded from the petitioners to vacate the subject property, but the latter refused claiming that they were in possession of the subject property for more than 75 years. Petitioners' refusal to vacate the subject property prompted respondent and her predecessors-in-interest to file a case for unlawful detainer against petitioners before the 5th MCTC of Zamboanguita-Dauin, Negros Oriental which was docketed as Civil Case No. CC-284.[7]

The 5th MCTC of Zamboanguita-Dauin, Negros Oriental ruled in favor of the petitioners, and declared that the respondent and the heirs of Cipriana Elma failed to establish that the petitioners entered the property by mere tolerance.[8] It further ruled that as between the heirs of Cipriana Elma and petitioners, the latter have shown superior right as they have possessed the subject lot for at least 75 years.[9] On appeal, the RTC Branch 40 dismissed the complaint for lack of jurisdiction on the part of the 5th MCTC of Zamboanguita-Dauin, Negros Oriental.[10] The RTC Branch 40 held that the complaint did not contain the essential facts for an unlawful detainer case.

Several years after, the Department of Agrarian Reform (DAR) granted respondent a Certificate of Land Ownership Award (CLOA) No. 00234689 over the subject property. As a result, respondent was able to secure OCT No. OCT-12607 in her name. Thus, respondent filed the aforesaid complaint for recovery of property with actual damages against petitioners based on her subsequent acquisition of the OCT before the 5th MCTC of

---

[7] *Id.* at 7.

[8] *Id.* at 30.

[9] *Id.*

[10] *Id.* at 23.

Zamboanguita-Dauin, Negros Oriental.[11] The case was docketed as Civil Case No. 2010-338.

In their answer, petitioners averred that the complaint is dismissible on the ground of *res judicata* in view of the dismissal of the unlawful detainer case that she filed earlier; that respondent's CLOA was issued without factual and legal basis; that Teofanes has been in possession of the subject property since birth considering that he inherited the subject property from his mother Cristina Ansok and his grandfather Gaudencio Elma; and that his possession of the subject property was uncontested for 75 years. For these reasons, petitioners assert that respondent's OCT is void.[12]

The Ruling of the 5th MCTC of Zamboanguita-Dauin, Negros Oriental

On February 14, 2013, the 5th MCTC of Zamboanguita-Dauin, Negros Oriental ruled in favor of respondent. According to the trial court, respondent, who is armed with a title, is preferred in the possession of the subject property.[13] It rejected petitioners' challenge of respondent's title as it amounts to a collateral attack which is proscribed by law.[14] It disposed of the case as follows:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs *(sic)* declaring her the rightful possessor of Lot No. 859. Consequently, defendants are hereby ordered:
>
> 1. To immediately vacate Lot No. 859;
> 2. To surrender the peaceful possession of Lot No. 859 to plaintiff;
> 3. To remove all improvements introduced by defendants on Lot No. 859 at their expense; and
> 4. To pay the costs of the suit.
>
> SO ORDERED.[15]

---

[11] *Id.*

[12] *Id.*

[13] *Id.* at 23-24.

[14] *Id.*

[15] As culled from the Decision dated March 15, 2018 of the Court of Appeals, *id.* at 24.

Aggrieved, petitioners appealed to the RTC.

The Ruling of the RTC

On July 24, 2013, Branch 38, RTC, Dumaguete City rendered the Decision dismissing petitioners' appeal, to wit:

> WHEREFORE, in view of the foregoing, defendants-appellants' appeal is hereby DISMISSED. The Decision of the Municipal Circuit Trial Court of Dauin-Zamboanguita, is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[16]

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC Decision and ruled in this wise:

> WHEREFORE, premises considered, the instant petition for review is DENIED. The Decision dated 24 July 2013 of the Regional Trial Court, 7th Judicial Region, Branch 38, Dumaguete City, in Civil Case No. AP-05-13-1217, is AFFIRMED *in toto*.
>
> SO ORDERED.[17]

The CA agreed with the RTC that the MCTC had jurisdiction over respondent's complaint for recovery of possession and damages against petitioners. It found that based on the allegations in the subject complaint, respondent prayed for the recovery of possession of the subject property from petitioners.[18] According to the CA, there is no juridical tie of landownership or tenancy that exists between the parties which would categorize the complaint as an agrarian dispute.[19] The CA added that *res judicata* is not a bar to Civil Case No. 2010-338 as the first case in Civil Case No. CC-284 was dismissed based on technical grounds and thus, not a judgment on the merits.[20] Lastly, the

---

[16] *Id.*

[17] *Id.* at 34.

[18] *Id.* at 26-28.

[19] *Id.* at 29.

[20] *Id.* at 29-31.

CA ruled that OCT No. OCT-12607 gives respondent a better right to the possession of the subject lot and such title is immune from collateral attack.[21]

The CA denied petitioners' Motion for Reconsideration.[22] Hence, the present petition.

Petitioners raise the following errors:

I.

WHETHER THE MCTC HAS JURISDICTION OVER THE CASE.

II.

WHETHER THE RESPONDENT HAS BETTER RIGHT TO THE SUBJECT LOT.

III.

WHETHER PETITIONERS' COUNTERCLAIM CONSTITUTE A COLLATERAL ATTACK ON THE TITLE.

Petitioners insist that it is the DAR that has jurisdiction over the case and not the MCTC because the case involves the implementation of the agrarian reform law.[23] Moreover, they maintain that they have a better right to possess the subject property as their rights have already been settled early on before the MCTC in Civil Case No. CC-284 and that respondent, being one of the heirs of Cipriana Elma who previously filed an ejectment case against them before the MCTC is bound by the judgment of that case. Petitioners assert that the declaration of nullity of a void title may be sought through direct or collateral attack.[24] Thus, their answer with counterclaim attacking the respondent's title was a permissible direct attack.[25]

---

[21] *Id.* at 32-34.

[22] *Id.* at 36-40.

[23] *Id.* at 9-11.

[24] *Id.* at 11.

[25] *Id.* at 12.

On the other hand, respondent reiterates her contentions that: (1) the complaint, not being an agrarian case, fell properly within the jurisdiction of the MCTC;[26] and (2) the RTC was correct in dismissing petitioners' appeal as their challenge against respondent's title constituted an impermissible collateral attack against OCT No. OCT-12607.[27]

The Court's Ruling

The petition is bereft of merit.

First, the MCTC has jurisdiction over respondent's Complaint for Recovery of Possession and Damages. It is worthy to emphasize that jurisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought.[28] It is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred.[29] Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or in a motion to dismiss[30] otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.[31]

Section 33 of Batas Pambansa Blg. 129, as amended by Section 3 of Republic Act No. (RA) 7691,[32] vests the Metropolitan Trial

---

[26] *Id.* at 26.

[27] *Id.*

[28] *Ignacio v. Office of the City Treasurer of Q.C., et al.*, 817 Phil. 1133, 1143-1144 (2017). Citations omitted.

[29] *Republic v. Heirs of Paus*, G.R. No. 201273, August 14, 2019.

[30] *Id.*

[31] *Malabanan v. Republic*, G.R. No. 201821, September 19, 2018.

[32] Entitled, "An Act Expanding The Jurisdiction Of The Metropolitan Trial Courts, Municipal Trial Courts, And Municipal Circuit Trial Courts, Amending

Courts, Municipal Trial Courts, and the MCTCs with exclusive and original jurisdiction over possessory actions, *i.e.*, *accion publiciana* and *accion reivindicatoria*, where the assessed value of the subject property does not exceed ₱20,000.00, or, if the realty involved is located in Metro Manila, such value does not exceed ₱50,000.00.

On the other hand, Section 50 of RA 6657, or the Comprehensive Agrarian Reform Law of 1998, grants the DAR with the primary jurisdiction to determine and adjudicate agrarian reform disputes and exclusive jurisdiction over all matters involving the implementation of the agrarian reform programs. Section 3 (d) of RA 6657 defines an agrarian dispute as *any controversy relating to tenural agreements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements*.

A judicious perusal of respondent's complaint reveals that all she prayed for was to recover possession of the subject property from petitioners. The Court finds no juridical tie of landownership, or tenancy that exists between respondent and petitioners which would have categorized the complaint as an agrarian dispute. The fact that respondents' OCT emanated from the CLOA will not make the controversy an agrarian dispute and divest the regular courts of jurisdiction over it. Evidently, the CA was correct in sustaining the jurisdiction of the MCTC over Civil Case No. 2010-338.

Second, it is worthy to stress and reiterate that *res judicata* is not a bar to the subsequent civil case for recovery of property filed by respondent. The Court finds that the CA correctly affirmed the RTC's ratiocination that *res judicata* has no application to the case at bench.

For The Purpose Batas Pambansa, Blg. 129, Otherwise Known As The 'JUDICIARY Reorganization Act Of 1980,'" approved on March 25, 1994.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[33] It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.[34] It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[35]

The doctrine of *res judicata* is provided in Section 47 (b) and (c), Rule 39 of the Rules of Court, which reads:

> Section 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

---

[33] *Heirs of Casiño, Sr. v. Development Bank of the Philippines, Malaybalay Branch, Bukidnon*, G.R. Nos. 204052-53, March 11, 2020.

[34] *Fenix (CEZA) International, Inc. v. Executive Secretary*, G.R. No. 235258, August 6, 2018, 876 SCRA 379, 387.

[35] *Id.*, citing *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 382 (2015).

Under the aforequoted provisions, there are two distinct concepts of *res judicata*; namely: (a) bar by prior judgment; and (b) conclusiveness of judgment. In *Sps. Ocampo v. Heirs of Bernardino U. Dionisio*,[36] the Court explained these concepts as follows:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[37]

For *res judicata* under the first concept (bar by prior judgment) to apply, the following requisites must concur: (a) a former final judgment that was rendered on the merits; (b) the court in the former judgment had jurisdiction over the subject matter and the parties; and (c) identity of parties, subject matter and cause of action between the first and second actions.[38] In contrast,

---

[36] 744 Phil. 716 (2014).

[37] *Id.* at 726-727, citing *Judge Abelita III v. P/Supt. Doria, et al.*, 612 Phil. 1127, 1136-1137 (2009).

[38] *Fenix (CEZA) International, Inc. v. Executive Secretary, supra* note 34 at 389, citing *Ley Construction & Development Corporation v. Philippine*

the elements of conclusiveness of judgment are identity of: (a) parties; and (b) subject matter in the first and second cases.[39]

In this case, the elements of *res judicata*, as a bar by prior judgment, are not present.

One of the requisites of *res judicata* calls for a judgment on the merits or that which is rendered after arguments and investigation and when there is determination which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial.[40] Thus, a judgment on the merits is one wherein there is an unequivocal determination of the rights and obligations of the parties with respect to the causes of action and the subject matter of the case.[41]

The decision in the unlawful detainer case is not a judgment on the merits. It is worthy to recall that Civil Case No. CC-284 (unlawful detainer), which was subsequently appealed to the RTC as Civil Case No. 13819, was dismissed based on the ground of lack of jurisdiction, or clearly based on mere technicality. According to the RTC, respondent's complaint for unlawful detainer failed to aver essential facts for unlawful detainer. There was no unequivocal determination of the rights and obligations of the parties with respect to the cause of action for unlawful detainer. As such, the final disposition of the complaint for unlawful detainer, which is a dismissal for lack of jurisdiction, is not a ruling on the merits.

Likewise, even for the sake of argument that the previous unlawful detainer case was decided on the merits, still the concept

---

Commercial & International Bank, 635 Phil. 503, 511-512 (2010), further citing *Alcantara v. Department of Environment and Natural Resources*, 582 Phil. 717, 734-735 (2008).

[39] *Id.*

[40] *Custodio v. Corrado*, 479 Phil. 415, 424 (2004), citing *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 391 (2001), further citing *Diwa v. Donato*, 304 Phil. 771, 779 (1994).

[41] *Id.*

of *res judicata* will not apply in the instant case. A judicious perusal of the records reveals that there is no identity of causes of actions between Civil Case No. CC-284 (*accion interdictal* or unlawful detainer) and Civil Case No. 2010-338 (*accion reivindicatoria* or recovery of property).

A judgment in a forcible entry or unlawful detainer case disposes of no other issue except possession and establishes only who between the claimants has the right of possession. In *Heirs of Cullado v. Gutierrez*[42] the Court held:

> x x x The judgment rendered in an action for forcible entry or unlawful detainer is conclusive with respect to the possession only, will not bind the title or affect the ownership of the land or building, and will not bar an action between the same parties respecting title to the land or building. When the issue of ownership is raised by the defendant in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.
>
> x x x x x x x x x
>
> In an *accion reivindicatoria*, the cause of action of the plaintiff is to recover possession by virtue of his ownership of the land subject of the dispute. This follows that universe of rights conferred to the owner of property, or more commonly known as the attributes of ownership.[43]

A careful scrutiny of respondent's Complaint for Recovery of Property reveals that it is an *accion reivindicatoria* or an action to recover possession by virtue of ownership. It is apparent in respondent's complaint that she filed the action to recover possession of the subject property by virtue of OCT No. OCT-12607. Evidently, in the action for recovery of property, respondent is asserting her ownership of the subject property and seeking to recover its possession by virtue of such ownership.

The Court in *Custodio v. Corrado*[44] elucidated that *res judicata* has no application between an ejectment case and one for *accion*

---

[42] G.R. No. 212938, July 30, 2019.

[43] *Id.*

[44] *Custodio v. Corrado*, *supra* note 40.

reivindicatoria because there is no identity of causes of action between the two cases, thus:

> Indeed, an ejectment case such as Civil Case No. 116, involves a different cause of action from an *accion publiciana* or *accion reivindicatoria*, such as Civil Case No. 120, and the judgment of the former shall not bar the filing of another case for recovery of possession as an element of ownership. A judgment in a forcible entry or detainer case disposes of no other issue than possession and establishes only who has the right of possession, but by no means constitutes a bar to an action for determination of who has the right or title of ownership. Incidentally, we agree with the findings of the RTC that Civil Case No. 120 is not an *accion publiciana* but more of an *accion reivindicatoria* as shown by the respondent's allegation in the complaint that he is the registered owner of the subject lot and that the petitioner had constructed a bungalow thereon and had been continuously occupying the same since then.
>
> The distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land is well-settled in our jurisprudence. What really distinguishes an action for unlawful detainer from a possessory action *(accion publiciana)* and from a reivindicatory action *(accion reivindicatoria)* is that the first is limited to the question of *possession de facto*. An unlawful detainer suit *(accion interdictal)* together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reivindicatoria* or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession.
>
> Further, it bears stressing that the issue on the applicability of *res judicata* to the circumstance obtaining in this case is far from novel and not without precedence. In *Vda. de Villanueva v. Court of Appeals*, we held that a judgment in a case for forcible entry which involved only the issue of physical possession *(possession de facto)* and not ownership will not bar an action between the same parties respecting title or ownership, such as an *accion reivindicatoria* or a suit to recover possession of a parcel of land as an element of ownership, because there is no identity of causes of action between the two.[45]

---

[45] *Id.* at 425-426.

Without doubt, *res judicata* cannot be invoked between the previous unlawful detainer case and the instant case for recovery of property.

Finally, petitioners' challenge against respondent's title is clearly a collateral attack on the latter which is proscribed by law.

Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, prohibits a collateral attack to a certificate of title, *viz.*:

> Sec. 48. Certificate not subject to collateral attack. — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law.

The Court, through the pen of Associate Justice Florenz D. Regalado, judiciously discussed in *Co, et al. v. Court of Appeals, et al.*,[46] the distinctions between a direct attack and collateral attack on Torrens Title, thus:

> Anent the issue on whether the counterclaim attacking the validity of the Torrens title on the ground of fraud is a collateral attack, we distinguish between the two remedies against a judgment or final order. *A direct attack against a judgment is made through an action or proceeding the main object of which is to annul, set aside, or enjoin the enforcement of such judgment, if not yet carried into effect; or, if the property has been disposed of, the aggrieved party may sue for recovery. A collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action.* This is proper only when the judgment, on its face, is null and void, as where it is patent that the court which rendered said judgment has no jurisdiction.
>
> In their reply dated September 11, 1990, petitioners argue that the issues of fraud and ownership raised in their so-called compulsory counterclaim partake of the nature of an independent complaint which they may pursue for the purpose of assailing the validity of the transfer certificate of title of private respondents. That theory will not prosper.

---

[46] 274 Phil. 108 (1991).

While a counterclaim may be filed with a subject matter or for a relief different from those in the basic complaint in the case, it does not follow that such counterclaim is in the nature of a separate and independent action in itself. In fact, its allowance in the action is subject to explicit conditions, as above set forth, particularly in its required relation to the subject matter of the opposing party's claim. Failing in that respect, it cannot even be entertained as a counterclaim in the original case but must be filed and pursued as an altogether different and original action.

It is evident that the objective of such claim is to nullify the title of private respondents to the property in question, which thereby challenges the judgment pursuant to which the title was decreed. This is apparently a collateral attack which is not permitted under the principle of indefeasibility of a Torrens title. It is well settled that a Torrens title cannot be collaterally attacked. The issue on the validity of title, *i.e.*, whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose. Hence, whether or not petitioners have the right to claim ownership of the land in question is beyond the province of the instant proceeding. That should be threshed out in a proper action. The two proceedings are distinct and should not be confused.[47]

Unmistakably, petitioners' claim that the OCT No. OCT-12607 was improvidently issued by DAR to respondent constitutes an impermissible collateral attack on respondent's title. Petitioners' attack on the proceeding granting respondent's title was made as an incident in the main action for recovery of property. The MCTC, RTC, as well as the CA, correctly struck down petitioners' attack against respondent's certificate of title.

WHEREFORE, the petition is **DENIED**. The Decision dated March 15, 2018 and the Resolution dated September 20, 2019 of the Court of Appeals in CA-G.R. SP No. 07886 are **AFFIRMED** *in toto*.

SO ORDERED.

Leonen (*Chairperson*), *Hernando,* and *Rosario, JJ.*, concur.

Delos Santos,[**] *J.,* on official leave.

---

[47] *Id.* at 115-116. Citations omitted; italics supplied.

INDEX

INDEX

ADMINISTRATIVE OFFENSES

Conduct Prejudicial to the Best Interest of the Service — Under the 2017 Rules on Administrative Cases in the Civil Service, conduct prejudicial to the best interest of the service is a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year on the first offense and dismissal from service on the second; the 2017 Rules, however, grants the disciplining authority the discretion to consider mitigating circumstances in imposing the penalty. (Re: Incident of Unauthorized Distribution of Pamphlets Concerning the Election Protest of Ferdinand Marcos, Jr. to the Offices of the Justices of the Supreme Court; A.M. No. 2019-11-SC; Nov. 24, 2020) p. 934

AGRARIAN REFORM

Agrarian Dispute — Absent tenancy relationship between the respondent and the petitioner, a complaint for recovery of possession of property cannot be categorized as an agrarian dispute. (Spouses Ansok, *et al. v.* Tingas; G.R. No. 251537 [Formerly UDK-16573]; Nov. 25, 2020) p. 1222

— Section 3(d) of R.A. No. 6657 defines an agrarian dispute as any controversy relating to tenural agreements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. (*Id.*)

Alienable and Disposable Land for Distribution Under the Comprehensive Agrarian Reform Program (CARP) — Under Section 6 of Commonwealth Act No. 141, the prerogative to classify and reclassify land to alienable and disposable land is granted to the president, who can declare so in a presidential proclamation or an executive order; under Section 1-A of Executive Order No. 407, as amended by Executive Order No. 448, part of the

— The Department of Agrarian Reform's approval of the conversion of agricultural land into an industrial estate, or any other use, is a condition precedent before developing the land for industrial use; the lack of approval for the conversion means that the farmland was never placed beyond the scope of the Comprehensive Agrarian Reform Program. (*Id.*)

— To require conversion and reclassification, it must be clearly shown which specific parcels of agricultural land are actually used for non-agricultural purpose. (*Id.*)

— Under Section 65 of the Comprehensive Agrarian Reform Law, conversion or reclassification may be allowed "when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes. (*Id.*)

Jurisdiction Over Agrarian Matters — Section 50 of R.A. No. 6657, or the Comprehensive Agrarian Reform Law of 1998, grants the DAR with the primary jurisdiction to determine and adjudicate agrarian reform disputes and exclusive jurisdiction over all matters involving the implementation of the agrarian reform programs. (Spouses Ansok, *et al. v.* Tingas; G.R. No. 251537 [Formerly UDK-16573]; Nov. 25, 2020) p. 1222

AGGRAVATING OR QUALIFYING CIRCUMSTANCES

Abuse of Superior Strength — The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime; the appreciation of abuse of superior strength depends on the age, size, and strength of the parties. (Uddin *v.* People; G.R. No. 249588; Nov. 23, 2020) p. 878

specialized jurisdictions." (Philippine Rabbit Bus Lines, Inc. *v.* Bumagat; G.R. No. 249134; Nov. 25, 2020) p. 1211

— The Court, after all, is not a trier of facts and does not ordinarily embark on the evaluation of evidence adduced during trial; however, this rule is *not* absolute; one such exception to this rule covers instances when the findings of fact of the quasi-judicial agency concerned conflict or contradict those of the CA; "when there is variance in the factual findings, it is incumbent upon this Court to reexamine the facts once again." (*Id.*)

— Findings of fact of administrative bodies, if based on substantial evidence and affirmed by the appellate court, are controlling on the reviewing authority. (Purificacion *v.* Gobing, *et al.*; G.R. No. 191359; Nov. 11, 2020) p. 15

Factual Findings of the Court of Tax Appeals — Factual findings of the Court of Tax Appeals, which has gained expertise on tax problems, are generally conclusive upon the Supreme Court. (Commissioner of Internal Revenue *v.* East Asia Utilities Corporation; G.R. No. 225266; Nov. 16, 2020) p. 192

— Findings of fact of the CTA, which, by the very nature of its functions, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, are generally regarded as final, binding, and conclusive upon this Court; the findings shall not be reviewed nor disturbed on appeal unless a party can show that these are not supported by evidence, or when the judgment is premised on a misapprehension of facts, or when the lower courts overlooked certain relevant facts which, if considered, would justify a different conclusion. (Commissioner of Internal Revenue *v.* Philex Mining Corporation; G.R. No. 230016; Nov. 23, 2020) p. 840

— The factual findings of the CTA are generally accorded the highest respect, being the court solely dedicated to considering tax issues**.** (Thunderbird Pilipinas Hotels

Factual Findings of Trial Courts and the Court of Appeals, if Contradictory — It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence. (Purisima, Jr., *et al. v.* Purisima, *et al.*; G.R. No. 200484; Nov. 18, 2020) p. 637

Late Filing of an Appeal — Parties are ordinarily bound by the negligence of their counsels in failing to timely file an appeal, but the court may treat the petition with leniency to serve substantial justice. (Alanis III *v.* Court of Appeals, Cagayan de Oro City, *et al.;* G.R. No. 216425; Nov. 11, 2020) p. 74

Petition for Review on Certiorari Under Rule 45 — A cursory reading of the Petition reveals that it primarily raises a question of fact, which is inappropriate in a Rule 45 petition; the Court's jurisdiction in a Rule 45 petition is limited to the review of questions of law because the Court is not a trier of facts. (Manila Electric Company (MERALCO) *v.* AAA Cryogenics Philippines, Inc.; G.R. No. 207429; Nov. 18, 2020) p. 674

— A remedy under the law which is confined to settling questions of law and not questions of facts; a question of fact requires this Court to review the truthfulness or falsity of the allegations of the parties; this review includes assessment of the probative value of the evidence presented; there is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties. (Purisima, Jr., *et al. v.* Purisima, *et al.*; G.R. No. 200484; Nov. 18, 2020) p. 637

— A Rule 45 petition is proper only for resolving questions of law; after all, this Court is not a trier of facts; there are, however, exceptional cases where this Court may

— The lawyer's acceptance of a new relation which invites suspicion of unfaithfulness or double-dealing constitutes conflict of interest. (*Id.*)

— Three tests developed by jurisprudence to determine the existence of conflict of interest; *first*, whether a lawyer is duty-bound to fight for an issue, or claim on behalf of one client and, at the same time, to oppose that claim for the other client; *second*, whether acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty; *third*, whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment. (*Id.*)

Duties of Lawyers — As a keeper of the public faith, a lawyer is burdened with a high degree of social responsibility. (In re: Supreme Court (First Division) Notice of Judgment Dated December 14, 2011 in G.R. No. 188376 *v.* Miñas; A.C. No. 12536 [Formerly CBD 12-3298]; Nov. 17, 2020) p. 342

— Lawyers have the duty to serve clients with competence and diligence; failure to file the necessary pleadings resulting in the dismissal of the client's case violates the duty and renders the erring lawyer liable. (Taghoy, *et al. v.* Atty. Tecson III; A.C. No. 12446; Nov. 16, 2020) p. 117

Gross Misconduct — Misconduct is defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official; it is considered a grave offense in cases where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present. (In re: Supreme Court (First Division) Notice of Judgment Dated December 14, 2011 in G.R. No. 188376 *v.* Miñas; A.C. No. 12536 [Formerly CBD 12-3298]; Nov. 17, 2020) p. 342

CERTIORARI

Grave Abuse of Discretion — The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. (People *v.* Sandiganbayan (Third Division), *et al.;* G.R. Nos. 190728-29; Nov. 18, 2020) p. 600

— There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be equivalent to lack of jurisdiction. (People *v.* Sandiganbayan (Third Division), *et al*.; G.R. Nos. 190728-29; Nov. 18, 2020) p. 600

Petition for Certiorari Under Rule 65 — A special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy, and adequate remedy in the ordinary course of law and the same may not be entertained when a party to a case fails to appeal a judgment or final order despite the availability of that remedy. (People *v.* Sandiganbayan (Third Division), *et al.;* G.R. Nos. 190728-29; Nov. 18, 2020) p. 600

— Oft-repeated is the principle that petitions for *certiorari* under Rule 65 of the Rules of Court are confined solely to questions of jurisdiction; these ask whether a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. (Republic *v.* Ponce-Pilapil; G.R. No. 219185; Nov. 25, 2020) p. 1090

— Petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials; this Court may review Rule 65 petitions, as in these present cases, assailing a legislative act.

CHILD ABUSE

and excessive, as in *Lucido v. People*: strangulating, severely pinching, and beating an eight (8)-year-old child to cause her to limp are intrinsically cruel and excessive; these acts of abuse impair the child's dignity and worth as a human being and infringe upon her right to grow up in a safe, wholesome, and harmonious place. (*Id.*)

— The essential elements of Section 5(b), Article III of R.A. No. 7610 are: (1) the accused commits the act of sexual intercourse or *lascivious conduct;* (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child, whether male or female, is below 18 years of age; under Section 3(a) of R.A. No. 7610, the term "children" refers to persons below 18 years of age, or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. (Uddin *v.* People; G.R. No. 249588; Nov. 23, 2020) p. 878

Lack of Intent as a Defense — Intent is not an indispensable element to sustain all convictions under Section 10(a) of Republic Act No. 7610; generally, in *mala prohibita*, the defense of lack of criminal intent is irrelevant; as long as all the elements of the offense have been established beyond reasonable doubt, conviction ensues. (Malcampo-Repollo *v.* People; G.R. No. 246017; Nov. 25, 2020) p. 1159

— Intent was used generally where this Court held that the act was done maliciously, with intent to injure another person; he was found criminally liable even though the resulting act of child abuse was different from that which he intended; this Court did not require the prosecution to prove the specific intent of debasing, degrading, or demeaning the inherent dignity of the child; it is sufficient that prohibited acts were committed against a child, which acts result in a violation of Republic Act No. 7610. (*Id.*)

— We clarify our pronouncement in *Mabunot v. People*, where this Court characterized the violation of Section

development; these four acts are separate modes of committing child abuse. (Malcampo-Repollo *v.* People; G.R. No. 246017; Nov. 25, 2020) p. 1159

— The Court of Appeals correctly relied on *Sanchez v. People* in ruling that the commission of acts prejudicial to a child's development is not a necessary element, but a separate mode of commission under Section 10 of Republic Act No. 7610. (*Id.*)

COMMISSION ON AUDIT (COA)

Jurisdiction of COA — In *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, this Court ruled that when the issue involves compliance with applicable auditing laws and rules on procurement, such matters are not within the usual area of knowledge, experience and expertise of most judges but within the special competence of COA auditors and accountants. (Commission on Audit, *et al. v.* Hon. Ferrer, Acting Presiding Judge of the Regional Trial Court, Branch 33, Pili, Camarines Sur, *et al.*; G.R. No. 218870; Nov. 24, 2020) p. 1031

— The Constitution and law bestow primary jurisdiction on the examination and audit of government accounts to the COA; as one of the three (3) independent constitutional commissions, COA has the power to define the scope of its audit and examination, and to establish the techniques and methods required therefor. (*Id.*)

— Jurisprudence has interpreted Section 7 of Article IX of the 1987 Constitution as a manifestation to grant the COA broad authority to decide on specialized matters delegated to them; the 1987 Constitution limits this Court's authority to review decisions of the Constitutional Commissions only to instances of grave abuse of discretion amounting to patent and substantial denial of due process. (*Id.*)

— Section 48 of Presidential Decree No. 1445 lays down the procedure to appeal notices of disallowance issued by agency auditors, *viz*: *Appeal from decision of auditors.* — Any person aggrieved by the decision of an auditor

Proof of Conspiracy — Except in the case of the mastermind of a crime, it must also be shown that the accused performed an overt act in furtherance of the conspiracy; the Court has held that in most instances, direct proof of a previous agreement need not be established, for conspiracy may be deduced from the acts of the accused pointing to a joint purpose, concerted action and community of interest. (Pascual, *et al. v.* People; G.R. No. 241901; Nov. 25, 2020) p. 1130

— In case of doubt as to the accused's participation, the doubt should be resolved in his favour; the rationale for this is that where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice. (*Id.*)

Requisites — To prove conspiracy, the prosecution must establish the following three requisites: (1) that two or more persons came to an agreement; (2) that the agreement concerned the commission of a crime; and (3) that the execution of the felony was decided upon. (Pascual, *et al. v.* People; G.R. No. 241901; Nov. 25, 2020) p. 1130

CONTRACTS

Contract of Sale — The statute of frauds is applicable only to executory contracts, not to totally or partially performed contracts; a contract of sale, whether oral or written, is classified as a consensual contract, which means that the sale is perfected by mere consent and no particular form is required for its validity. (Purisima, Jr., *et al. v.* Purisima, *et al.*; G.R. No. 200484; Nov. 18, 2020) p. 637

COURT PERSONNEL

Conduct Prejudicial to the Best Interest of the Service — Conduct prejudicial to the best interest of the service constitutes one's acts that "tarnish the image and integrity of their public office"; it "need not be related or connected to the public officer's official functions." (Re: Incident

Buzon, RTC, Br. 72, Malabon City, *et al.*; A.M. No. P-18-3850; Nov. 17, 2020) p. 367

— The act of receiving money from litigants degrades the judiciary and diminishes the respect and regard of the people for the court and its personnel. (*Id.*)

— The special nature of the court personnel's duties and responsibilities is manifest in the adoption of a separate Code of Conduct especially for them, the Code of Conduct for Court Personnel; one of the prohibitions in the said Code is directed against all forms of solicitation of gift or other pecuniary or material benefits or receipts of contributions for himself/herself from any person, whether or not a litigant or lawyer; the intention behind the prohibition is to avoid any suspicion that the major purpose of the donor is to influence the court personnel in performing official duties. (*Id.*)

COURTS

Doctrine of Hierarchy of Courts — Adherence to the rule on judicial hierarchy is also hinged on due process; by going through the judicial structure, litigants are given the opportunity to present and establish their evidence before the trial court; by directly filing before this Court, litigants undermine their right to due process by depriving themselves of the "opportunity to completely pursue or defend their causes of actions." (Kilusang Magbubukid ng Pilipinas (KMP), *et al. v.* Aurora Pacific Economic Zone and Freeport Authority, Represented by Its Board Composed of Roberto K. Mathay, President & CEO, *et al.*; G.R. No. 198688; Nov. 24, 2020) p. 944

— In *The Diocese of Bacolod*, we provided exceptions to the doctrine of hierarchy of courts accepted by this Court; however, to invoke any of these exceptions, petitioners must purely raise questions of law; the decisive factor is not the invocation of special and important reasons, but the nature of the question raised in the petition. (*Id.*)

— The doctrine is a filtering mechanism; it averts inordinate demands on this Court's attention, time, and resources,

which are better devoted to those matters within its exclusive jurisdiction, and to prevent further overcrowding of its docket; this Court cannot be burdened with the functions of the lower courts; by mandate, it must not be so engrossed with cases limited to transient rights and obligations of individuals, as it is called on to settle matters involving "national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights"; with the hierarchy of courts, this Court can direct its attention to such cases that allow it to perform more fundamental tasks assigned by the Constitution. (*Id.*)

— The doctrine is not an ironclad rule; exceptions may be admitted if the ends of justice are defeated by a rigid adherence to the rules of procedures and technicalities; this Court has full discretion to take cognizance of special civil actions for *certiorari* filed directly before it if there are compelling reasons. (*Id.*)

— The hierarchy of courts is borne out of the establishment of various levels of courts under the Constitution and our procedural laws; this includes how courts interact with respect to each other's rulings, as well as the determination of proper forum for appeals and petitions. (*Id.*)

— The principle of judicial hierarchy requires that petitions for writs of *certiorari*, prohibition, and mandamus be filed with the appropriate lower court; the purpose for the doctrine requiring respect for the hierarchy of courts is to ensure that the different levels of the judiciary perform their designated roles in an effective and efficient manner; observance of the rule frees up this Court of functions falling within the lower courts so that it can focus on its fundamental tasks under the Constitution; the following are the exceptions to the doctrine on hierarchy of courts: (1) those involving genuine issues of constitutionality that must be addressed at the most immediate time; (2) those where the issues are of transcendental importance, and the threat to fundamental

constitutional rights are so great as to outweigh the necessity for prudence; (3) cases of first impression, where no jurisprudence yet exists that will guide the lower courts on such issues; (4) where the constitutional issues raised are better decided after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion; (5) where time is of the essence; (6) where the act being questioned was that of a constitutional body; (7) where there is no other plain, speedy, and adequate remedy in the ordinary course of law that could free petitioner from the injurious effects of respondents' acts in violation of their constitutional rights; and (8) the issues involve *public welfare*, the advancement of public policy, the broader interest of justice, or where the orders complained of are patent nullities, or where appeal can be considered as clearly an inappropriate remedy. (Pantaleon, *et al. v.* Metro Manila Development Authority; G.R. No. 194335; Nov. 17, 2020) p. 453

— This Court is a court of last resort; to directly invoke its original jurisdiction, there must be convincing and significant reasons set out in the petition, along with compliance with our rules on justiciability; observing the rule on hierarchy of courts is a constitutional imperative arising from two important considerations, as held in *Gios-Samar, Inc. v. Department of Transportation and Communications*: first, our judicial structure; and second, the requirements of due process. (Kilusang Magbubukid ng Pilipinas (KMP), *et al. v.* Aurora Pacific Economic Zone and Freeport Authority, Represented by Its Board Composed of Roberto K. Mathay, President & CEO, *et al.*; G.R. No. 198688; Nov. 24, 2020) p. 944

— This Court shares concurrent jurisdiction with lower courts over petitions for *certiorari*, prohibition, mandamus, *quo warranto*, and *habeas corpus*; under the rule on hierarchy of courts, a petition must first be brought before the lowest court with jurisdiction and then appealed before it reaches this Court; this concurrent jurisdiction

DANGEROUS DRUGS

compel the payment of the property taken. (Kilusang Magbubukid ng Pilipinas (KMP), *et al. v.* Aurora Pacific Economic Zone and Freeport Authority, Represented by Its Board Composed of Roberto K. Mathay, President & CEO, *et al.*; G.R. No. 198688; Nov. 24, 2020) p. 944

Requisites — Constitution mandates that private property shall not be taken for public use without just compensation; the State's inherent right to condemn private property is the power of eminent domain or expropriation, which must comply with the following requisites to be valid: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property should be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. (Department of Public Works and Highways *v.* Manalo, *et al.;* G.R. No. 217656; Nov. 16, 2020) p. 137

— Expropriation may be judicially claimed by filing either: (a) a complaint for expropriation by the expropriator; or (b) a complaint, or a counterclaim, for compensation by the deprived landowner, which is referred to as inverse expropriation. (*Id.*)

— The elements of taking of private property are laid down in *Republic v. Vda. de Castellvi*, namely: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry should be by legal authority; (4) the property must be devoted to a public use, or otherwise informally appropriated or injuriously affected; and (5) the property's utilization for public use must oust the owner and deprive them of all beneficial enjoyment of the property. (Kilusang Magbubukid ng Pilipinas (KMP), *et al. v.* Aurora Pacific Economic Zone and Freeport Authority, Represented by

— Because our current rule requires complete deprivation of intelligence, the slightest sign of reason before, during, or after the commission of the crime instantly overthrows the insanity defense; this is despite the wording of our penal law and recognition in our jurisprudence that an insane person's mental condition is not static and that they may experience lucid intervals from time to time; this is especially critical in our jurisdiction where insanity defense is mostly claimed based on mental disorders with active-phase symptoms such as schizophrenia. (*Id.*)

— Complete deprivation of intelligence has been equated to "defect of the understanding" such that the accused must have "no full and clear understanding of the nature and consequences of their acts"; deprivation of intelligence, however, is not a symptom of every mental illness. (*Id.*)

— Feeblemindedness has also been rejected by this Court as sufficient basis to support a claim of insanity; in *Formigones*, the accused was not deemed insane as he was not completely deprived of reason at the time he committed the offense and could still distinguish right from wrong; even his past conduct did not indicate that he was mentally ill. (*Id.*)

— We clarify the guidelines laid down in *People v. Formigones* and now apply a three-way test: first, insanity must be present at the time of the commission of the crime; second, insanity, which is the primary cause of the criminal act, must be medically proven; and third, the effect of the insanity is the inability to appreciate the nature and quality or wrongfulness of the act. (*Id.*)

— Considering the foregoing, we clarify the guidelines laid down in *Formigones*. Under this test, the insanity defense may prosper if: (1) the accused was unable to appreciate the nature and quality or the wrongfulness of his or her acts; (2) the inability occurred at the time of the commission of the crime; and (3) it must be as a result of a mental illness or disorder. (*Id.*)

— The defense should have presented other witnesses who could have given a more objective assessment of the accused's mental condition such as the quack doctor who he allegedly consulted or other people from his community who had personal knowledge of his behavior; the sole testimony of accused-appellant's mother was insufficient to show that his actions were caused by a mental illness. (*Id.*)

— The disparity in the quantum of evidence applied in insanity defenses vis-à-vis other defenses of avoidance and confession does not support any clear judicial policy; it simply imposes a standard more stringent on defendants who are not in full control of their faculties; the quantum of evidence in proving the accused's insanity should no longer be proof beyond reasonable doubt, but clear and convincing evidence. (*Id.*)

— The nature and degree of an accused's mental illness can be best identified by medical experts equipped with specialized knowledge to diagnose a person's mental health; it is highly crucial for the defense to present an expert who can testify on the mental state of the accused; while testimonies from medical experts are not absolutely indispensable in insanity defense cases, their observation of the accused are more accurate and authoritative; expert testimonies enable courts to verify if the behavior of the accused indeed resulted from a mental disease. (*Id.*)

— This Court defines insanity as: a manifestation in language or conduct of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition. (*Id.*)

— This Court realizes the difficulty and additional burden on the accused to seek psychiatric diagnosis; judges must be given leeway to order the mental examination of the accused either through discovery procedures or as an incident of trial; the conduct of mental examination is

viz: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. (*Id.*)

— The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. (Commission on Audit, *et al. v.* Hon. Ferrer, Acting Presiding Judge of the Regional Trial Court, Branch 33, Pili, Camarines Sur, *et al.*; G.R. No. 218870; Nov. 24, 2020) p. 1031

— The principle of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction. (*Id.*)

FELONIES

Attempted Felonies — The essential elements of an attempted felony are: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own

— Forum shopping consists in the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another, and possibly favorable, opinion in another forum (other than by appeal or by special civil action of *certiorari*), or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. (*Id.*)

— Filing another case with the same cause of action and prayer and involving the same parties despite the finality of the decision in the earlier case constitutes a violation of the rule against forum shopping. (Tapang *v.* Atty. Donayre; A.C. No. 12822; Nov. 18, 2020) p. 590

— It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets; what is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action. (SM Prime Holdings, Inc. *v.* Marañon, Jr., in his official capacity as the Governor of the Province of Negros Occidental and Chairman of the Committee on Awards and Disposal of Real Properties, The Province of Negros Occidental, *et al.;* G.R. No. 233448; Nov. 18, 2020) p. 725

— The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. (Tapang *v.* Atty. Donayre; A.C. No. 12822; Nov. 18, 2020) p. 590

Elements — Forum-shopping consists of filing multiple suits in different courts, either simultaneously or successively, involving the same parties, to ask the courts to rule on the same or related causes and/or to grant the same or

law but is only disallowed due to irregularities that are merely procedural in nature; and *(b)* the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation. (Abellanosa, *et al. v.* Commission on Audit, *et al.*; G.R. No. 185806; Nov. 17, 2020) p. 413

— Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions; Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions; to hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover. (*Id.*)

— COA disallowed incentive allowance payments must be returned. (Philippine Overseas Employment Administration (POEA), Represented by Its Administrator Hans Leo J. Cacdac, *et al. v.* Commission on Audit, Represented by Chairperson Ma. Grace M. Pulido-Tan; G.R. No. 210905; Nov. 17, 2020) p. 498

Rule Against Double Compensation — The grant of an incentive allowance which is deemed integrated into the basic salary is a violation of the rule against double compensation. (Philippine Overseas Employment Administration (POEA), Represented by Its Administrator Hans Leo J. Cacdac, *et al. v.* Commission on Audit,

INFORMAL SETTLERS

Eviction of — Article XIII, Section 10 of the Constitution provides: urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner; in relation, Section 9 of Republic Act No. 8974, or An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes, states: In case the expropriated land is occupied by squatters, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property; the implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992. (Department of Public Works and Highways *v.* Manalo, *et al.;* G.R. No. 217656; Nov. 16, 2020) p. 137

IMPORTED GOODS

Conditional Release of Imported Goods — Insofar as the steel industry is concerned, conditional release is imperative since doing the BPS [Bureau of Product Standard] inspection and certification right inside the customs premises is highly impractical, if not impossible primarily due to its limited space. Not only that. Since the prescribed procedure requires the installation of highly specialized equipment and machinery in a laboratory, at present, it can only be done by the lone testing center for steel bars in the country, the MIRDC [Metals Industry Research and Development] of the DOST inside its laboratory in Bicutan. (Department of Trade and Industry and its Bureau of Product Standards *v.* Steelasia Manufacturing Corporation; G.R. No. 238263; Nov. 16, 2020) p. 238

— Similar to the judicial concept of *custodia legis* over items in litigation, the DTI retains control over the imported goods when released from the physical custody

INJUNCTION

Jurisdiction — Actions for injunction lie within the original jurisdiction of the regional trial court. (Pantaleon, *et al. v.* Metro Manila Development Authority; G.R. No. 194335; Nov. 17, 2020) p. 453

JUDGES

Dishonesty — A judge's lack of transparency as to the true status of their case dockets is dishonesty. (Failure to Disclose Cases Submitted for Decision and Pending Motions of Judge Tirso F. Banquerigo, then Presiding Judge, MCTC, Tayasan-Jimalalud, Tayasan, Negros Oriental; A.M. No. MTJ-20-1938 (Formerly A.M. No. 20-02-1-MCTC); Nov. 17, 2020) p. 380

Effect of Respondent's Cessation from Office on a Pending Administrative Complaint —Retirement is not an impediment for imposing an administrative sanction. (Failure to Disclose Cases Submitted for Decision and Pending Motions of Judge Tirso F. Banquerigo, then Presiding Judge, MCTC, Tayasan-Jimalalud, Tayasan, Negros Oriental; A.M. No. MTJ-20-1938 (Formerly A.M. No. 20-02-1-MCTC); Nov. 17, 2020) p. 380

Errors of Judgment — Judges' failure to interpret the law or to properly appreciate the evidence presented does not necessarily render them administratively liable, except if their errors are tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice. (Philippine Deposit Insurance Corporation *v.* Judge Winlove M. Dumayas, Presiding Judge of the RTC of Makati City, Br. 59; A.M. No. RTJ-21-015 [Formerly OCA IPI No. 13-4162-RTJ]; Nov. 17, 2020) p. 392

Gross Ignorance of the Law — Favoring an argument based on an already superseded law and jurisprudence amounts to gross ignorance of the law. (Philippine Deposit Insurance Corporation *v.* Judge Winlove M. Dumayas, Presiding Judge of the RTC of Makati City, Br. 59; A.M. No. RTJ-21-015 [Formerly OCA IPI No. 13-4162-RTJ]; Nov. 17, 2020) p. 392

JURISDICTION

Bases of Jurisdiction — Jurisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought; it is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred. (Spouses Ansok, *et al. v.* Tingas; G.R. No. 251537 [Formerly UDK-16573]; Nov. 25, 2020) p. 1222

— Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or in a motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant. (*Id.*)

Jurisdiction Over the Subject Matter — Section 33 of Batas Pambansa Blg. 129, as amended by Section 3 of Republic Act No. 7691, vests the Metropolitan Trial Courts, Municipal Trial Courts, and the MCTCs with exclusive and original jurisdiction over possessory actions, *i.e.*, *accion publiciana* and *accion reivindicatoria*, where the assessed value of the subject property does not exceed ₱20,000.00, or, if the realty involved is located in Metro Manila, such value does not exceed ₱50,000.00. (Spouses Ansok, *et al. v.* Tingas; G.R. No. 251537 [Formerly UDK-16573]; Nov. 25, 2020) p. 1222

JUSTIFYING CIRCUMSTANCES

Self-Defense — An accused who pleads self-defense admits to the commission of the crime charged; he has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient

public land transportation services with the end in view of effecting continuing improvement of such services. (Pantaleon, *et al. v.* Metro Manila Development Authority; G.R. No. 194335; Nov. 17, 2020) p. 453

LEGISLATIVE POWERS

Delegation of Legislative Powers — The delegation of legislative power is valid only if: the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard, the limits of which are sufficiently determinate and determinable to which the delegate must conform in the performance of his functions. (Pantaleon, *et al. v.* Metro Manila Development Authority; G.R. No. 194335; Nov. 17, 2020) p. 453

— To avoid the taint of unlawful delegation, the statute delegating legislative power must: (a) be complete in itself, it must set forth therein the policy to be executed, carried out or implemented by the delegate and (b) fix a standard, the limits of which are sufficiently determinate or determinable, to which the delegate must conform in the performance of his functions; a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law; and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority. (*Id.*)

— To determine completeness, all of the terms and provisions of the law must leave nothing to the delegate except to implement it; what only can be delegated is not the discretion to determine what the law shall be but the discretion to determine how the law shall be enforced; enforcement of a delegated power may only be effected in conformity with a sufficient standard, which is used to map out the boundaries of the delegate's authority and thus prevent the delegation from running riot; the law must contain the limitations or guidelines to determine

does not vest until the liquidation of the conjugal partnership. (*Id.*)

METROPOLITAN MANILA DEVELOPMENT AUTHORITY (MMDA)

Jurisdiction — Section 2 of the Republic Act No. 7924 provides that the Metro Manila Development Authority's exercise of its powers is without diminution of the autonomy of the local government units concerning purely local matters; this means that the Metro Manila Development Authority has the right to regulate traffic in Metro Manila, subject to the jurisdiction of local government units to enact ordinances aligned with the Metro Manila Development Authority's general policies; the local government units are presumed to support and adopt the reimplementation of the number coding scheme to public utility buses plying their respective territorial jurisdictions, unless they release an issuance to the contrary. (Pantaleon, *et al. v.* Metro Manila Development Authority; G.R. No. 194335; Nov. 17, 2020) p. 453

— The jurisdiction of the Metro Manila Development Authority was conferred by law to address common problems involving basic services that transcended local boundaries; pursuant to this function, the Metro Manila Development Authority through its Council is expressly authorized to issue binding rules and regulations pertaining to traffic management. (*Id.*)

Powers and Functions — The challenged issuances were validly issued pursuant to the MMDA's power to regulate traffic, such as reimposing the number coding scheme on public utility buses operating along the major roads of Metro Manila; courts generally give much weight to the competence, expertness, experience and informed judgment of the government agency officials charged with the implementation of the law. (Pantaleon, *et al. v.* Metro Manila Development Authority; G.R. No. 194335; Nov. 17, 2020) p. 453

morals, and general welfare of the community" as well as to afford protection to labor. (*Id.*)

NOTARIAL PRACTICE

Duties of Notaries Public — A notary public should not notarize a document unless the persons who signed it are the same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein; otherwise, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. (Lopez *v.* Atty. Ramos; A.C. No. 12081 [Formerly CBD Case No. 14-4225]; Nov. 24, 2020) p. 916

— It is the notary public's duty to observe utmost care in complying with the formalities intended to protect the integrity of the notarized document and the act or acts it embodies. (*Id.*)

Effects of Notarization —Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity; thus, a notarized document is, by law, entitled to full faith and credit upon its face. (Kiener *v.* Atty. Amores; A.C. No. 9417; Nov. 18, 2020) p. 578

— The act of notarization is imbued with substantive public interest wherein a private document is converted into a public document, which results in the document's admissibility in evidence without further proof of its authenticity. (Lopez *v.* Atty. Ramos; A.C. No. 12081 [Formerly CBD Case No. 14-4225]; Nov. 24, 2020) p. 916

Requirement of Signatories' Presence — A community tax certificate (CTC) is no longer considered as competent evidence of identity. (Kiener *v.* Atty. Amores; A.C. No. 9417; Nov. 18, 2020) p. 578

— The signatory or affiant must physically appear before the notary public and sign the document in the latter's presence. (*Id.*)

Philippines is a party litigant to the case; the Office of the Solicitor General is the law office of the government; its default client is the Republic of the Philippines, but ultimately, "the distinguished client of the Office of the Solicitor General is the people themselves; its status as People's Tribune is properly invoked only if the Republic of the Philippines is a party litigant to the case." (Marcos, Jr. *v.* Robredo; PET Case No. 005; Nov. 17, 2020) p. 300

OWNERSHIP OF REAL PROPERTY

Modes of Acquiring Ownership — Under Article 712 of the Civil Code, there are generally two classifications of the modes of acquiring ownership, namely, the original mode, that is, "through occupation, acquisitive prescription, law or intellectual creation," and derivative mode "through succession *mortis causa* or tradition as a result of certain contracts, such as sale, barter, donation, assignment or *mutuum*." (Heirs of the Late Napoleon De Ocampo, Namely: Rosario De Ocampo, *et al. v.* Ollero, *et al.*; G.R. No. 231062; Nov. 25, 2020) p. 1103

Occupation — Occupation, no matter how long, does not vest title unless it is coupled with hostility toward the true owner. (Heirs of the Late Napoleon, Namely: Rosario De Ocampo, *et al. v.* Ollero, *et al.*; G.R. No. 231062; Nov. 25, 2020) p. 1103

PARTIES

Legal Standing — A direct injury is required to be shown to guarantee that the filing party has a "personal stake in the outcome of the controversy and, in effect, assures 'that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions'"; the person praying for a judicial remedy must show "a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic." (Kilusang Magbubukid ng Pilipinas (KMP), *et al. v.* Aurora Pacific Economic Zone and Freeport Authority, Represented by Its Board

PRIVILEGED COMMUNICATION

— Court deliberations are confidential and generally privileged communication. (Marcos, Jr. *v.* Robredo; PET Case No. 005; Nov. 17, 2020) p. 300

PROBATE

Extrinsic or Intrinsic Validity of a Will — As to the extrinsic validity of an alien's will, Articles 816 and 817 of the Civil Code both allow the application of Philippine law; the power of our courts to probate a will executed by an alien is likewise apparent in Rule 73, Section 1 of the Rules of Special Proceedings, which provides that if the decedent is an inhabitant of a foreign country, their will may be proved in the Regional Trial Court of any province in which they had an estate. (In the Matter of the Petition to Approve the Will of Luz Gaspe Lipson and Issuance of Letters Testamentary, *et al. v.* Hon. Judge Pacis-Trinidad, RTC, Br. 36, Iriga City; G.R. No. 229010; Nov. 23, 2020) p. 819

— Generally, the extrinsic validity of the will, which is the preliminary issue in probate of wills, is governed by the law of the country where the will was executed and presented for probate; the court where a will is presented for probate should, by default, apply only the law of the forum, as we do not take judicial notice of foreign laws. (*Id.*)

— It should be noted that probate proceedings deal generally with the extrinsic validity of the will sought to be probated, particularly on three aspects: whether the will submitted is indeed the decedent's last will and testament; compliance with the prescribed formalities for the execution of wills; the testamentary capacity of the testator; and the due execution of the last will and testament. (*Id.*)

Probate of a Will — A will is then submitted to the Regional Trial Court for probate proceeding to determine its authenticity, as "no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court." (In the Matter of the Petition

of the will, the courts may take cognizance of the petition and allow the probate of the will. (*Id.*)

PROCUREMENT OF GOODS OR SERVICES

Contracting Out of Services — A service for implementation, monitoring, or other regular and recurring activity of an agency cannot be contracted out. (Philippine Overseas Employment Administration [POEA], Represented by Its Administrator Hans Leo J. Cacdac, *et al. v.* Commission on Audit, Represented by Chairperson Ma. Grace M. Pulido-Tan; G.R. No. 210905; Nov. 17, 2020) p. 498

PROPERTY REGISTRATION

Direct and Collateral Attack on Torrens Title — The Court … judiciously discussed in *Co, et al. v. Court of Appeals, et al.*, the distinctions between a direct attack and collateral attack on Torrens Title, thus: "Anent the issue on whether the counterclaim attacking the validity of the Torrens title on the ground of fraud is a collateral attack, we distinguish between the two remedies against a judgment or final order; a direct attack against a judgment is made through an action or proceeding the main object of which is to annul, set aside, or enjoin the enforcement of such judgment, if not yet carried into effect; or, if the property has been disposed of, the aggrieved party may sue for recovery; a collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action." (Spouses Ansok, *et al. v.* Tingas; G.R. No. 251537 [Formerly UDK-16573]; Nov. 25, 2020) p. 1222

— Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, prohibits a collateral attack to a certificate of title. (*Id.*)

Registration of Property — For purposes of registration of any voluntary transactions before the Register of Deeds and the subsequent issuance of a new certificate of title, the owner's duplicate copy of the certificate of title must be surrendered by the parties to the Register of Deeds.

titled by him, on the principle of enforcement of a constructive trust. (*Id.*)

— Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion; possession by virtue of a mortgage, especially one which had already been redeemed is incompatible with possession in the concept of owner; for this reason alone, respondent was not entitled to a free patent to the subject lot. (*Id.*)

— Respondent's failure to state in her free patent application that the mortgage by reason of which she took possession of the subject lot had already been redeemed, and that she unilaterally appropriated the subject lot without foreclosing the mortgage amounted to a concealment of material facts belying claim of possession in the concept of owner; these acts were constitutive of fraud and misrepresentation within the context of Section 91 of C.A. No. 141, as amended, and were sufficient to cause *ipso facto* the cancellation of her free patent and title. (*Id.*)

— The case of *Taar v. Lawan* summarized the concurring requirements a free patent applicant must satisfy, namely: (1) the applicant must be a natural-born citizen of the Philippines; (2) the applicant must not own more than 12 hectares of land; (3) the applicant or his or her predecessor-in-interest must have continuously occupied and cultivated the land; (4) the continuous occupation and cultivation must be for a period of at least 30 years before April 15, 1990, which is the date of effectivity of R.A. No. 6940; and (5) payment of real estate taxes on the land while it has not been occupied by other persons. (*Id.*)

PUBLIC OFFICERS AND EMPLOYEES

Back Salaries During the Pendency of an Appeal — It is settled that petitioner was not exonerated of the charges against her, but she was found guilty of a lesser offense with a lesser penalty; thus, during the pendency of her appeal until the finality on April 24, 2010, petitioner is

(c) identity of parties, subject matter and cause of action between the first and second actions. (Spouses Ansok, *et al. v.* Tingas; G.R. No. 251537 [Formerly UDK-16573]; Nov. 25, 2020) p. 1222

— A dismissal on the ground of lack of jurisdiction or based on mere technicality is not a ruling on the merits. (*Id.*)

— One of the requisites of *res judicata* calls for a judgment on the merits or that which is rendered after arguments and investigation and when there is determination which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial. (*Id.*)

— *Res judicata* will not apply when there is no identity of causes of actions between the previous action for unlawful detainer and the present action for recovery of property. (*Id.*)

— The elements of conclusiveness of judgment are identity of: (a) parties; and (b) subject matter in the first and second cases. (*Id.*)

ROBBERY WITH RAPE

Original Intent to Take Another's Property — Robbery with Rape is penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of R.A. No. 7659; it contemplates a situation where the original intent of the accused was to take, with intent to gain, personal property belonging to another and Rape is committed on the occasion thereof or as an accompanying crime. (People *v.* Bueza; G.R. No. 242513; Nov. 18, 2020) p. 789

Elements — For a successful prosecution of the said crime, the following elements must be established beyond reasonable doubt: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with intent to gain or *animus lucrandi*; and d)

buyer has the right to demand the execution of a Deed of Absolute Sale in its favor. (*Id.*)

Sale of Real Property Evidenced by a Private Document — The "*Pagpapatunay*" is a valid contract of sale despite being unnotarized since under Article 1358, a private document, though not reduced to a public one, remains to be valid and is merely unenforceable; so that after the existence of the contract has been admitted, a party to the sale, if he or she is so minded, has the right to compel the other party to execute the proper document following Article 1357 of the Civil Code. (Fil-Estate Properties, Inc. *v.* Hermana Realty, Inc.; G.R. No. 231936; Nov. 25, 2020) p. 1116

Sale of Subdivision Lots and Condominiums — The owner or developer has the obligations to register the final deed of sale and to deliver the owner's duplicate certificate of title to the buyer for purposes of transfer and registration. (Fil-Estate Properties, Inc. *v.* Hermana Realty, Inc.; G.R. No. 231936; Nov. 25, 2020) p. 1116

SEAFARERS

Compensability of an Injury or Illness — Two elements must concur for an injury or illness to be compensable; first, that the injury or illness must be work-related; and second, that the work-related injury or illness must have arisen during the term of the seafarer's employment contract; in situations where the seafarer seeks to claim the compensation and benefits that Section 20-B grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable. (OSG Shipmanagement Manila, Inc., *et al*. *v.* De Jesus; G.R. No. 207344; Nov. 18, 2020) p. 652

public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities. (People *v.* Sandiganbayan (Third Division), *et al.;* G.R. Nos. 190728-29; Nov. 18, 2020) p. 600

***SOLUTIO INDEBITI* AND UNJUST ENRICHMENT**

Good Faith in the Receipt of Disallowed Amount — When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential; previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per *Madera*, have now been abandoned; as it stands, the general rule is that recipients, notwithstanding their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti*. (Abellanosa, *et al. v.* Commission on Audit, *et al.*; G.R. No. 185806; Nov. 17, 2020) p. 413

Principle of Solutio Indebiti and Unjust Enrichment — When a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework; the reason for this is because the civil liability of such payee-recipient, in contrast to an approving/authorizing officer, has no direct substantive relation to the performance of one's official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure. (Abellanosa, *et al. v.* Commission on Audit, *et al.*; G.R. No. 185806; Nov. 17, 2020) p. 413

Doctrine of in Pari Materia — The doctrine requires that statutes on the same subject be construed together because legislative enactments are supposed to form part of one uniform system, such that later statutes are deemed supplementary or complementary to earlier enactments. (Department of Trade and Industry and its Bureau of Product Standards *v.* Steelasia Manufacturing Corporation; G.R. No. 238263; Nov. 16, 2020) p. 238

Interpretation of a Statute — Courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers; to do so would be to do violence to the language of the law and to invade the legislative sphere. (Commissioner of Internal Revenue *v.* Philex Mining Corporation; G.R. No. 230016; Nov. 23, 2020) p. 840

— From the words of a statute there should be no departure; furthermore, every part of the statute must be interpreted with reference to the context, *i.e.* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. (*Id.*)

Plain Meaning Rule — It is elementary rule in statutory construction that when the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation; the plain-meaning rule or *verba legis*, expressed in the maxim *index animi sermo*, or speech is the index of intention, rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. (Commissioner of Internal Revenue *v.* Philex Mining Corporation; G.R. No. 230016; Nov. 23, 2020) p. 840

TAXATION

Allowable Deductions from Gross Income — The BIR issued RR No. 11-2005 revoking Section 7 of RR No. 2-2005 and removing the exclusivity of the enumeration of cost

— The 25% license fee is clearly distinct from the 5% income tax being collected by the Bureau of Internal Revenue. As clearly stated in the License, 25% of the gross gaming revenue is being paid by virtue of the License to establish and operate a casino at the Poro Point Special Economic and Freeport Zone. Nothing in the License's terms would show that such amount includes 5% income tax from petitioner's gaming operations. (*Id.*)

— A PEZA [Philippine Economic Zone Authority]-registered enterprise is entitled to a special tax of 5% on gross income earned within the ecozone in lieu of all national and local taxes. (Commissioner of Internal Revenue *v.* East Asia Utilities Corporation; G.R. No. 225266; Nov. 16, 2020) p. 192

Preferential Tax Treatment — In *Tiu v. Court of Appeals*, the validity of preferential tax treatment within areas covered by a special economic zone was upheld; in upholding the validity of the executive order, this Court found no violation of the equal protection clause because there are "real and substantive distinctions between the circumstances obtaining inside and those outside the Subic Naval Base, thereby justifying a valid and reasonable classification." (Kilusang Magbubukid ng Pilipinas (KMP), *et al. v.* Aurora Pacific Economic Zone and Freeport Authority, Represented by Its Board Composed of Roberto K. Mathay, President & CEO, *et al.*; G.R. No. 198688; Nov. 24, 2020) p. 944

Tax Credit or Refund or Tax Deductions — Under Section 112 (A), a taxpayer engaged in zero-rated sales may apply for the issuance of a tax credit certificate, or refund of excess input tax due or paid, attributable to the sale, subject to the following conditions: (1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the

is no will, or when there is one but does not pass probate, the law provides for the order of succession and the amount of successional rights for each heir; when real properties are involved, the law will also govern the formalities and consequences in the transfer of properties; however, prior to death, a person retains control as to how their estate will be distributed; this is done by executing a written document referred to as a will. (In the Matter of the Petition to Approve the Will of Luz Gaspe Lipson and Issuance of Letters Testamentary, *et al. v.* Hon. Judge Pacis-Trinidad, RTC, Br. 36, Iriga City; G.R. No. 229010; Nov. 23, 2020) p. 819

— When it comes to the form and solemnities of wills, which are part of its extrinsic validity, the Civil Code provides that the law of the country of execution shall govern; even if we assume that the foreign law applies, it does not necessarily mean that the Philippine court loses jurisdiction; foreign law, when relevant, must still be proven as a fact by evidence, as Philippine courts do not take judicial notice of foreign laws; courts, therefore, retain jurisdiction over the subject matter (probate) and the *res*, which is the real property. (*Id.*)

— Wills may be notarial or holographic; in either case, the formalities required for their execution is more elaborate than most deeds relating to other transfers of property. (*Id.*)

WITNESSES

Biased Testimony — A biased testimony is given by a witness whose relation "to the cause or to the parties is such that they have an incentive to exaggerate or give false color to their statements, or to suppress or to pervert the truth, or to state what is false." (Malcampo-Repollo *v.* People; G.R. No. 246017; Nov. 25, 2020) p. 1159

Inconsistencies in Testimonies — A witness is not impaired when the inconsistencies in the testimony refer to minor

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES